
Delaware Register of Regulations

Issue Date: September 1, 2008

Volume 12 - Issue 3, Pages 262 - 366



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Proposed
Final

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Hearing Notices



Pursuant to 29 **Del.C.** Chapter 11, Subchapter III, this issue of the *Register* contains all documents required to be published, and received, on or before August 15, 2008.

INFORMATION ABOUT THE DELAWARE REGISTER OF REGULATIONS

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DELAWARE REGISTER OF REGULATIONS

The *Delaware Register of Regulations* is an official State publication established by authority of 69 *Del. Laws*, c. 107 and is published on the first of each month throughout the year.

The *Delaware Register* will publish any regulations that are proposed to be adopted, amended or repealed and any emergency regulations promulgated.

The *Register* will also publish some or all of the following information:

- Governor's Executive Orders
 - Governor's Appointments
 - Agency Hearing and Meeting Notices
 - Other documents considered to be in the public interest.
-

CITATION TO THE DELAWARE REGISTER

The *Delaware Register of Regulations* is cited by volume, issue, page number and date. An example would be:

11 **DE Reg.** 759-786 (12/01/07)

Refers to Volume 11, pages 759-786 of the *Delaware Register* issued on December 1, 2007.

SUBSCRIPTION INFORMATION

The cost of a yearly subscription (12 issues) for the *Delaware Register of Regulations* is \$135.00. Single copies are available at a cost of \$12.00 per issue, including postage. For more information contact the Division of Research at 302-744-4114 or 1-800-282-8545 in Delaware.

CITIZEN PARTICIPATION IN THE REGULATORY PROCESS

Delaware citizens and other interested parties may participate in the process by which administrative regulations are adopted, amended or repealed, and may initiate the process by which the validity and applicability of regulations is determined.

Under 29 **Del.C.** §10115 whenever an agency proposes to formulate, adopt, amend or repeal a regulation, it shall file notice and full text of such proposals, together with copies of the existing regulation being adopted, amended or repealed, with the Registrar for publication in the *Register of Regulations* pursuant to §1134 of this title. The notice shall describe the nature of the proceedings including a brief synopsis of the subject, substance, issues, possible terms of the agency action, a reference to the legal authority of the agency to act, and reference to any other regulations that may be impacted or affected by the proposal, and shall state the manner in which persons may present their views; if in writing, of the place to which and the final date by which such views may be submitted; or if at a public hearing, the date, time and place of the hearing. If a public hearing is to be held, such public hearing shall not be scheduled less than 20 days following publication of notice of the proposal in the *Register of Regulations*. If a public hearing will be held on the proposal, notice of the time, date, place and a summary of the nature of the proposal shall also be published in at least 2 Delaware newspapers of general circulation. The notice shall also be mailed to all persons who have made timely written requests of the agency for advance notice of its regulation-making proceedings.

INFORMATION ABOUT THE DELAWARE REGISTER OF REGULATIONS

The opportunity for public comment shall be held open for a minimum of 30 days after the proposal is published in the *Register of Regulations*. At the conclusion of all hearings and after receipt, within the time allowed, of all written materials, upon all the testimonial and written evidence and information submitted, together with summaries of the evidence and information by subordinates, the agency shall determine whether a regulation should be adopted, amended or repealed and shall issue its conclusion in an order which shall include: (1) A brief summary of the evidence and information submitted; (2) A brief summary of its findings of fact with respect to the evidence and information, except where a rule of procedure is being adopted or amended; (3) A decision to adopt, amend or repeal a regulation or to take no action and the decision shall be supported by its findings on the evidence and information received; (4) The exact text and citation of such regulation adopted, amended or repealed; (5) The effective date of the order; (6) Any other findings or conclusions required by the law under which the agency has authority to act; and (7) The signature of at least a quorum of the agency members.

The effective date of an order which adopts, amends or repeals a regulation shall be not less than 10 days from the date the order adopting, amending or repealing a regulation has been published in its final form in the *Register of Regulations*, unless such adoption, amendment or repeal qualifies as an emergency under §10119.

Any person aggrieved by and claiming the unlawfulness of any regulation may bring an action in the Court for declaratory relief.

No action of an agency with respect to the making or consideration of a proposed adoption, amendment or repeal of a regulation shall be subject to review until final agency action on the proposal has been taken. When any regulation is the subject of an enforcement action in the Court, the lawfulness of such regulation may be reviewed by the Court as a defense in the action.

Except as provided in the preceding section, no judicial review of a regulation is available unless a complaint therefor is filed in the Court within 30 days of the day the agency order with respect to the regulation was published in the *Register of Regulations*.

CLOSING DATES AND ISSUE DATES FOR THE DELAWARE REGISTER OF REGULATIONS

ISSUE DATE	CLOSING DATE	CLOSING TIME
October 1	September 15	4:30 p.m.
November 1	October 16	4:30 p.m.
December 1	November 15	4:30 p.m.
January 1	December 15	4:30 p.m.
February 1	January 15	4:30 p.m.

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Symbol Key

Arial type indicates the text existing prior to the regulation being promulgated. Underlined text indicates new text. Language which is ~~stricken~~ through indicates text being deleted.

Emergency Regulations

Under 29 **Del.C.** §10119 an agency may promulgate a regulatory change as an Emergency under the following conditions:

§ 10119. Emergency regulations.

If an agency determines that an imminent peril to the public health, safety or welfare requires the adoption, amendment or repeal of a regulation with less than the notice required by § 10115, the following rules shall apply:

(1) The agency may proceed to act without prior notice or hearing or upon any abbreviated notice and hearing that it finds practicable;

(2) The order adopting, amending or repealing a regulation shall state, in writing, the reasons for the agency's determination that such emergency action is necessary;

(3) The order effecting such action may be effective for a period of not longer than 120 days and may be renewed once for a period not exceeding 60 days;

(4) When such an order is issued without any of the public procedures otherwise required or authorized by this chapter, the agency shall state as part of the order that it will receive, consider and respond to petitions by any interested person for the reconsideration or revision thereof; and

(5) The agency shall submit a copy of the emergency order to the Registrar for publication in the next issue of the Register of Regulations. (60 Del. Laws, c. 585, § 1; 62 Del. Laws, c. 301, § 2; 71 Del. Laws, c. 48, § 10.)

DEPARTMENT OF HEALTH AND SOCIAL SERVICES**DIVISION OF MEDICAID AND MEDICAL ASSISTANCE**

Statutory Authority: 31 Delaware Code, Section 512 (31 **Del.C.** §512)

PUBLIC NOTICE

**Medical Assistance During Transition to Medicare Program
Attachment 2.2-A, Page 18 and Supplement 6 to Attachment 2.6-A
DSSM 17800**

Nature of the Proceedings:

This emergency regulation is being promulgated to amend the Title XIX Medicaid State Plan and the Division of Social Services Manual to expand the population of individuals eligible to receive the optional state supplementary payment. Delaware Health and Social Services ("Department") / Division of Medicaid and Medical Assistance (DMMA) must take this action on an emergency basis to ensure access to quality healthcare. The Department has determined that a threat to the public welfare exists if it is not implemented without prior notice or hearing.

Nature of Proposed Amendment:

The SSI Medical Assistance Transition (MAT) Program was implemented on March 1, 2001. This program was specifically designed to provide Medicaid coverage to SSI beneficiaries who lost SSI benefits (and consequently Medicaid eligibility) due to the receipt of Social Security Disability Income (SSDI) benefits. This extension of Medicaid coverage was made possible by establishing an Optional State Supplement program which satisfies federal requirements for Medicaid Federal Financial Participation (FFP). The Title XIX Medicaid State Plan defines this group as "Individuals who lose SSI due to receipt of Social Security Disability Income and are not yet eligible for Medicare."

Summary of the Proposed Amendment:

The Medicaid State Plan and the Division of Social Services Manual (DSSM) will be amended to provide coverage to those individuals, not previously receiving SSI, who may be eligible for Medicaid based solely on income and who lose eligibility due to the receipt of Social Security Disability Income (SSDI), which exceed Medicaid eligibility guidelines. Effective September 1, 2008, eligibility would be for any individual who lost eligibility for Medicaid on or after January 1, 2008 due to the receipt of SSDI and does not have Medicare coverage.

The provisions of this amendment are subject to approval by the Centers for Medicare and Medicaid Services (CMS).

This emergency regulation is also published concurrently herein under "Proposed Regulations" to allow for public comment.

Findings of Fact:

The Department finds that a compelling public interest exists which necessitates promulgation of an emergency regulation and requests emergency approval of this proposed amendment to add coverage for this new optional categorically needy Medicaid population group. The Department will receive, consider, and respond to petitions by any interested person for the reconsideration or revision thereof.

THEREFORE, IT IS ORDERED, to assure compliance with relevant Federal Medicaid rules, that the proposed revisions to the Title XIX Medicaid State Plan and the Division of Social Services Manual regarding the Medical Assistance during Transition (MAT) to Medicare Program be adopted on an emergency basis without prior notice or hearing.

Vincent P. Meconi, Secretary, DHSS, August 14, 2008

DMMA EMERGENCY REGULATION #08-39a REVISIONS:

Revision: HCFA-PM-91-4 (BPD) ATTACHMENT 2.2-A
Page 18
OMB NO.: 0938

State: DELAWARE

Agency*	Citation(s)	Groups Covered
	C.	Optional Groups Other Than the Medically Needy (Continued)
	_____ (4)	Aged individuals in domiciliary facilities or other group living arrangements as defined under SSI.
	_____ (5)	Blind individuals in domiciliary facilities or other group living arrangements as defined under SSI.

EMERGENCY REGULATIONS

- _____ (6) Disabled individuals in domiciliary facilities or other group living arrangements as defined under SSI.
- _____ (7) Individuals receiving federally administered optional State supplement that meets the conditions specified in 42 CFR 435.230.
- _____ (8) Individuals receiving a State administered optional State supplement that meets the conditions specified in 42 CFR 435.230.
- ___X___ (9) Individuals in additional classifications approved by the Secretary as follows:
~~Individual who lose SSI due to receipt of Social Security Disability and are not yet eligible for Medicare.~~
Individuals who lose eligibility for Medicaid due to the receipt of Social Security Disability Insurance and are not yet eligible for Medical

(Break In Continuity of Sections)

Revision:

HCFA-AT-85-3
FEBRUARY 1985

SUPPLEMENT 6 TO
ATTACHMENT 2.6-A

EMERGENCY REGULATIONS

State: DELAWARE

Standards for Optional State Supplementary Payments

PAYMENT CATEGORY (REASONABLE CLASSIFICATION)	FEDERAL	STATE	INCOME		LEVELS		INCOME DISREGARDS EMPLOYED	
			GROSS		NET			
			1 Person	Couple	1 Person	Couple		
(1)	(2)	(3)			(4)			(5)
Individuals Residing in Adult Foster Care Homes	X	SSI + \$140 + \$20			SSI + \$140			Disregards According to the SSI Program
Individuals Who Lose <u>SSI Eligibility for Medicaid</u> Due to Receipt of Social Security Disability <u>Insurance</u> and Are Not Yet Eligible for Medicare		X	\$5.00		\$5.00			All Income is Excluded

**DMMA EMERGENCY REGULATION #08-39b
REVISIONS:**

17800 Medical Assistance during Transition to Medicare

Under 42 CFR 435.232 Medicaid may be provided to individuals who receive only an optional State supplement and who would be eligible for SSI except for the level of their income.

The rules in this section set forth the eligibility requirements for coverage under this state-administered Optional State Supplementation group - Medical Assistance during Transition to Medicare (MAT). The MAT group is implemented with the earliest effective date of February 1, 2001 ~~March 1, 2001~~. Eligibility under this group is not retroactive.

17801 Status Eligibility

In addition to the general Medicaid eligibility requirements listed in DSSM 14000 - 44950.7 ~~14960~~, the individual ~~meets all the conditions listed below~~ must meet the following conditions:

- a) received SSI, and
- b) ~~lost eligibility for SSI because of Social Security Disability~~ lost eligibility for SSI due to the receipt of Social Security Disability Insurance, and
- c) does not have Medicare coverage, ~~and~~

~~d) is not an inmate in a public institution. An individual is an inmate when serving time for a criminal offense or confined involuntarily in State or Federal prisons, jail, detention facilities, or other penal facilities. An individual awaiting trial in a detention center is considered an inmate of a public institution~~

~~e) an annual redetermination is completed. A redetermination is a re-evaluation of a recipient's continued eligibility for medical assistance. In a redetermination, all eligibility factors are re-examined to ensure that the recipient continues to meet categorical eligibility requirements. When a redetermination is due, the recipient is required to complete and return a new DSS application form. A redetermination is complete when all eligibility factors are examined and a decision regarding continued eligibility is reached.~~

Effective September 1, 2008, coverage under the MAT group is extended to an individual who:

a) lost eligibility for Medicaid on or after January 1, 2008, due to the receipt of Social Security Disability Insurance, and

b) does not have Medicare coverage.

17802 Financial Eligibility

All income and resources are excluded.

17803 Eligibility Determination

~~DSS will receive the names of individuals who lose SSI via the monthly State Data Exchange (SDX). When an individual loses Medicaid eligibility because of the loss of SSI, Federal regulations require a redetermination of Medicaid eligibility based upon information obtained through the SDX file. A new application is not required. The SSI Unit will use the information obtained from the SDX to redetermine Medicaid eligibility.~~

When an individual loses Medicaid eligibility, a redetermination will be completed to the extent possible based on information contained in the individual's file. An application form may be required if additional or updated information is needed for the redetermination.

17804 Income Standard

The income standard is \$5.00.

17805 Payment Level

Countable income is deducted from the income standard.

Symbol Key

Arial type indicates the text existing prior to the regulation being promulgated. Underlined text indicates new text. Language which is ~~stricken~~ through indicates text being deleted.

Proposed Regulations

Under 29 **Del.C.** §10115 whenever an agency proposes to formulate, adopt, amend or repeal a regulation, it shall file notice and full text of such proposals, together with copies of the existing regulation being adopted, amended or repealed, with the Registrar for publication in the *Register of Regulations* pursuant to §1134 of this title. The notice shall describe the nature of the proceedings including a brief synopsis of the subject, substance, issues, possible terms of the agency action, a reference to the legal authority of the agency to act, and reference to any other regulations that may be impacted or affected by the proposal, and shall state the manner in which persons may present their views; if in writing, of the place to which and the final date by which such views may be submitted; or if at a public hearing, the date, time and place of the hearing. If a public hearing is to be held, such public hearing shall not be scheduled less than 20 days following publication of notice of the proposal in the *Register of Regulations*. If a public hearing will be held on the proposal, notice of the time, date, place and a summary of the nature of the proposal shall also be published in at least 2 Delaware newspapers of general circulation. The notice shall also be mailed to all persons who have made timely written requests of the agency for advance notice of its regulation-making proceedings.

DELAWARE RIVER BASIN COMMISSION

PUBLIC NOTICE OF PROPOSED RULEMAKING AND PUBLIC HEARING

Proposed Amendments to the *Water Code* and *Comprehensive Plan* to Implement a Revised Water Audit Approach to Identify and Control Water Loss

The Delaware River Basin Commission (“Commission” or “DRBC”) is a federal-state regional agency charged with managing the water resources of the Delaware River Basin without regard to political boundaries. Its members are the governors of the four Basin states – New Jersey, New York, Pennsylvania and Delaware – and a federal representative, the North Atlantic Division Commander of the United States Army Corps of Engineers. The Commission is not subject to the requirements of the Delaware Administrative Procedures Act. This notice is published by the Commission for informational purposes.

Summary: The Commission will hold a **public hearing** to receive comments on proposed amendments to the Commission’s *Water Code* and *Comprehensive Plan* to phase in a requirement for water purveyors to follow a revised water audit approach for identifying and controlling water loss.

Background: An estimated 150 million gallons of treated and pressurized water is physically lost from public water supply distribution systems in the Delaware River Basin per day and current methods to account for, track and reduce this loss are inadequate.

The purpose of the proposed amendments is to phase in a program requiring water purveyors to perform a water audit and report their findings in accordance with a new audit structure established by the American Water Works Association (AWWA) and the International Water Association (IWA). These new methods are widely regarded as superior to the existing approach, which entails tracking “unaccounted for water,” which is no longer considered best practice.

The new water audit methodology provides a rational approach that will facilitate more consistent tracking and reporting than the existing approach allows. It will help water managers and regulators, including the Commission, state agencies, and utility managers, target their efforts to improve water supply efficiency, thereby reducing water withdrawals. Improving water accountability will contribute to achieving objective 1.3.C of the *Water Resources Plan for the Delaware River Basin*, which calls for ensuring maximum feasible efficiency of water use

across all sectors.

The Commission's Water Management Advisory Committee (WMAC), which has taken primary responsibility for reviewing the proposed audit methodology and developing these amendments, is composed of representatives from a wide range of public and private sector organizations. WMAC membership includes: Mr. Ferdows Ali, Environmental Scientist with the New Jersey Department of Agriculture; Ms. Janet L. Bowers, Executive Director of the Chester County Water Resources Authority; Mr. Gerald Esposito, President of Tidewater Utilities; Mr. David Froehlich, of the Wissahickon Valley Watershed Association; Mr. David Jostenski, Chief of the Water Use Assessment Section of the Pennsylvania Department of Environmental Protection; Mr. Mark Hartle, of the Pennsylvania Fish & Boat Commission, Division of Environmental Services; Mr. Stewart Lovell, Supervisor of Water Allocations of the Delaware Department of Natural Resources and Environmental Control; Mr. John Mello, of Region II of the U.S. Environmental Protection Agency; Mr. Bruno M. Mercuri, of Mercuri and Associates, Inc.; Dr. Joseph A. Miri, of the New Jersey Department of Environmental Protection, Water Supply Element; Mr. Robert Molzahn, of the Water Resources Association of the Delaware River Basin; Mr. Howard Neukrug, of the Philadelphia Water Department; Ms. Mary Ellen Noble, of the Delaware Riverkeeper Network; Ms. Senobar Safafar, of the New York City Department of Environmental Protection, Strategic Services Division, Bureau of Water Supply; Mr. Tom Simms, Director of the Institute of Soil and Environmental Quality of the University of Delaware DGS Annex; Mr. Ronald A. Sloto, of the U.S. Geological Survey, Water Resources Division; Ms. Edith Stevens, of the League of Women Voters; and Mr. Glen Stevens, of the U.S. Army Corps of Engineers.

On May 25, 2004 the WMAC established a subcommittee to investigate the issue of water loss and water accountability in light of new methods proposed by the American Water Works Association (AWWA) and the International Water Association (IWA). The subcommittee met on four occasions to review the Commission's current policies concerning water loss and water accountability and to discuss the new methods. The DRBC's current policies are based on the concept of "unaccounted for water," which is no longer considered best practice. The new methods are based upon more precise definitions and more rational accounting procedures that will result in a clearer understanding on the part of utility managers and regulators of the causes of water loss. The new methods will thus facilitate targeted improvements that reduce system water demands, with region-wide benefits. DRBC staff participated in the development of water audit software based on the new accounting methods, in an effort led by the AWWA Water Loss Control Committee (WLCC).

On March 16, 2005, after listening to a presentation outlining the benefits of the new water accountability methods, the DRBC Commissioners asked DRBC staff and the WMAC to develop a position statement and policy recommendations for the Commission and to engage water purveyors in the Basin in a pilot study of the newly developed water audit software in order to test the software and solicit feedback.

Six water purveyors from the Delaware River Basin were identified to participate in the nationwide pilot study. The comments and feedback provided to AWWA led to improvements in the software. In March 2006, the software was approved by the AWWA WLCC and was posted on the AWWA website, where it is available at no charge to all users. Links to the software are posted on the water conservation page of the DRBC website: <http://www.state.nj.us/drbc/policy.htm>

The WMAC and its subcommittee determined that the IWA/AWWA water audit methodology represents an improvement to the Commission's current practices and can lead to multiple benefits for water utilities and other stakeholders. It is anticipated that adoption of the IWA/AWWA approach will: (1) improve upon the traditional approach for identifying "unaccounted for water," which lacks standardized terminology and a clearly defined water audit structure; (2) provide a rational water audit structure to help identify water losses and improve water supply system efficiency; (3) provide meaningful performance indicators to help identify systems with the greatest losses and to allow water utility managers to make reliable comparisons of performance and identify best practices for controlling water loss in an economical way; (4) identify ways to improve water supply efficiency and thereby reduce water withdrawals that have no beneficial end use; (5) help to target efforts to reduce the estimated 150 million gallons per day that is physically lost from public water supply distribution systems in the Basin; (6) enhance utility revenues by enabling utility managers to recover the significant revenue that is otherwise lost due to *apparent losses* such as theft of service, unbilled connections, meter discrepancies and data errors; and (7) help utility managers and regulators identify *real losses* (such as leakage) that waste treated and pressurized water and increase operating costs. Significant real losses indicate opportunities for improved asset management that can reduce the vulnerability of utilities to disruptive water main breaks, other service disruptions and water quality upsets.

Because the water audit approach is relatively new in a regulatory context, the proposed amendments call

for phased implementation. Until 2011, the DRBC will promote the voluntary use of the IWA/AWWA water audit program. During this period, information will be gathered from within the Basin and nationwide to assist in the establishment of performance indicators for water loss, which ultimately will replace the "unaccounted for water" targets. If approved, the proposed amendments will require water purveyors to perform an annual water audit conforming to the IWA/AWWA methodology beginning in calendar year 2012.

The proposed amendments also require changes in the way data pertaining to water loss are collected by the state agencies and shared with DRBC.

Dates: The Commission will hold an **informational meeting** on Wednesday, September 10, 2008 from 4:00 P.M. to 6:00 P.M. at the Commission's office building, located at 25 State Police Drive, West Trenton, New Jersey. Driving directions are available on the Commission's website – www.drbc.net. Please do not rely on Internet mapping services as they may not provide accurate directions to the DRBC. The **public hearing** will be held on Thursday, September 25, 2008 at the Commission's office building, located at 25 State Police Drive, West Trenton, New Jersey. The hearing will begin at 1:30 P.M. and will continue until all those who wish to testify are afforded an opportunity to do so. Persons wishing to testify at the hearing are asked to register in advance by phoning Ms. Paula Schmitt at 609-883-9500, ext. 224. **Written comments** must be received by 5:00 P.M. on Friday, October 3, 2008. Written comments may be submitted as follows: if by email, to paula.schmitt@drbc.state.nj.us; if by fax, to Commission Secretary at 609-883-9522; if by U.S. Mail, to Commission Secretary, DRBC, P.O. Box 7360, West Trenton, NJ 08628-0360; or if by overnight mail, to Commission Secretary, DRBC, 25 State Police Drive, West Trenton, NJ 08628-0360. In all cases, please include the commenter's name, address and affiliation, if any, in the comment document and include "Water Audit" in the subject line.

Further Information: The current rule and the full text of the proposed amendments are posted on the Commission's website, www.drbc.net. Hard copies may be obtained by contacting Ms. Paula Schmitt at 609-883-9500, ext. 224. Please contact Commission Secretary Pamela Bush, 609-883-9500 ext. 203 with questions about the proposed rule or the rulemaking process.

Pamela M. Bush, Esq.
Commission Secretary

Text of Proposed Amendments

It is proposed to amend Comprehensive Plan and Article 2 of the Delaware River Basin Water Code as set forth below. Deleted text is in bold and denoted by brackets and inserted text is in bold and denoted by underscore.

§ 2.1.2 C.1

e. An ongoing water auditing program in accordance with section 2.1.8

§ 2.1.6 A. Such a program shall at a minimum include: periodic surveys to monitor leakage, ~~enumerate unaccounted for water,~~ and determine the current status of system infrastructure; recommendations to ~~monitor and control leakage;~~ and a schedule for the implementation of such recommendations. Each purveyor's program shall be subject to review and approval by the designated agency in the state where the system is located.

~~"Unaccounted for water" is defined as the difference between the "metered ratio" and 100 percent. The metered ratio is the amount of water delivered through service meters divided by the amount of water entering the distribution system.~~

The designated state agencies are: Delaware Department of Natural Resources and Environmental Control; New Jersey Department of Environmental Protection; New York Department of Health, and Pennsylvania Department of Environmental Protection.

B. ~~Each purveyor that distributes in excess of one million gallons per day (mgd) shall submit its initial program to monitor and control leakage to the appropriate designated agency within two years and each purveyor that distributes between 100,000 gpd and 1 mgd shall submit its initial program to monitor and control leakage to the appropriate designated agency within five years of the effective date of this regulation or at such earlier date as shall be fixed by the designated state agency. Each purveyor shall prepare and submit a revised~~

PROPOSED REGULATIONS

~~and updated program to monitor and control leakage every three years thereafter or at such earlier date as shall be required by the designated state agency. The designated state agency may require more frequent program submission from purveyors with unaccounted for water that is in excess of 15 percent. Each purveyor shall strive to minimize system leakage to levels as guided by IWA/AWWA Water Audit Methodology (AWWA Water Loss Control Committee (WLCC) Water Audit Software) and corresponding AWWA guidance.~~

Any project approvals hereafter granted pursuant.

§ 2.1.8 Water Auditing (Resolution No. 2008 - xx).

A. It shall be the policy of the commission to encourage owners of water supply systems serving the public to implement a standardized water audit methodology to ensure accountability in the management of water resources.

B. For the period beginning [EFFECTIVE DATE] and ending December 31, 2011, owners of water supply systems serving the public, with sources or service area located in the Delaware River Basin, are encouraged to implement an annual calendar year water audit program conforming to IWA/AWWA Water Audit Methodology (AWWA Water Loss Control Committee (WLCC) Water Audit Software) and corresponding AWWA guidance.

C. Effective January 1, 2012, the owners of each water supply system serving the public, with sources or service area located in the Delaware River Basin, shall implement an annual calendar year water audit program conforming to IWA/AWWA Water Audit Methodology (AWWA Water Loss Control Committee (WLCC) Water Audit Software) and corresponding AWWA guidance.

D. Effective January 1, 2013, non-revenue water reported under section 2.50.3.B.1.b.ii. shall be computed in accordance with IWA/AWWA Water Audit Methodology (AWWA Water Loss Control Committee (WLCC) Water Audit Software) and corresponding AWWA guidance.

§ 2.50.3 B.1.b.ii. . . . Other metered (Specify)

Unaccounted for (defined as the amount of water entering the distribution system minus the amount of water delivered through service meters)** Non-revenue water, including unbilled authorized consumption, apparent losses, and real losses computed in accordance with section 2.1.8.D

Total...

**Further breakdown of unaccounted for water can be provided. For example, estimated fire hydrant use, other unmetered public uses, and leakage losses.

DELAWARE STATE FIRE PREVENTION COMMISSION

Statutory Authority: 16 Delaware Code, Section 6603 (16 Del.C. §6603)

PUBLIC NOTICE

Delaware State Fire Prevention Regulations, Part VIII, Fire Department and Ambulance Company Administrative Standards, Chapter 1 Financial Audit Regulations

The Delaware State Fire Prevention Commission will hold a public hearing pursuant to 16 Del.C. §6622 and 29 Del.C. §101 on Tuesday, October 21, 2008 at 1:00 P.M. in the Commission Chamber, Delaware State Fire School, Delaware Fire Service Center, 1463 Chestnut Grove Road, Dover, Delaware. The Commission is proposing new regulations as the result of the enactment of H.B. 329, codified at 16 Del.C. §6622. The new regulations will be included as Delaware State Fire Prevention Regulations, Part VIII, Fire Department and Ambulance Company Administrative Standards, Financial Audit Regulations.

Persons may view the proposed changes to the Regulations between the hours of 8:00 a.m. to 4:30 p.m., Monday through Friday, at the Delaware State Fire Prevention Commission, Delaware State Fire School, Delaware Fire Service Center, 1463 Chestnut Grove Road, Dover, Delaware, 19904. You can find the meeting announcement

and proposed changes on the Delaware Website <http://www.delaware.gov/egov/calendar.nsf>. There will be a reasonable fee charge for copies of the proposed changes or the proposed changes may be retrieved from the webpage for free.

Persons may present their views in writing by mailing their views to the Commission at the above address prior to the hearing. The final date to submit written or oral comments shall be at the public hearing. If the number of persons desiring to testify at the public hearing is large, the amount of time allotted to each speaker may be limited.

The Commission will consider promulgating the proposed regulations immediately following the public hearing.

Chapter 1: Financial Audit Regulations

1.0 General.

- 1.1 **Purpose.** To establish the minimum requirements related to the mandatory submission of financial audits by volunteer fire and ambulance companies in accordance with the provisions of 16 **Del.C.** §6622.
- 1.2 **Scope.** These Regulations address the required types of audits, the reporting periods, procedures for reviewing the audits and the processes to be followed in the event a company fails to submit or submits an inadequate audit.
- 1.3 **Application.** These Regulations apply to all volunteer fire and ambulance companies and their approved subsidiaries (e.g. auxiliaries operating under the same tax identification number) in the State of Delaware and the Smyrna and Georgetown American Legion Ambulances and the Mid-Sussex Rescue Squad. These regulations do not apply to independent auxiliary organizations operating under a tax identification number that is separate from the fire or ambulance company's number.

2.0 Definitions.

- 2.1 **Review:** Financial data analysis that provides less assurance than a full audit, but more than a compilation (which provides no assurance). In a review, an auditor expresses limited assurance that the company's financial statements do not require any material modification for them to be in conformity with the provisions of generally accepted accounting principles ("GAAP"). (Ref. Business Dictionary.com)

3.0 Audit Types.

- 3.1 **Audits must be completed by an independent certified public accounting firm at a minimum "Review" level. The audit submission shall include, but not be limited to, the following:**
 - 3.1.1 **The "Review" Opinion Letter provided to the volunteer fire or ambulance companies by their independent accountant.**
 - 3.1.2 **Financial statements, including:**
 - 3.1.2.1 **Statement of financial position (Balance sheet).**
 - 3.1.2.2 **Statement of revenue and expenses.**
 - 3.1.2.3 **Statement of cash flow.**
 - 3.1.2.4 **Notes to financial statements.**
 - 3.1.2.5 **Letter of observations and/or comments.**
 - 3.1.2.6 **Letter of representation.**
 - 3.1.3 **The required documentation shall be submitted to the Commission with a cover sheet signed off on by the volunteer fire or ambulance company president verifying that he or she has reviewed the submission and all of the items required by subsections 3.1.1 and 3.1.2 are included.**
- 3.2 **A full financial audit may be required, in the Commission's discretion, if a fire department or ambulance company receives a second annual "Review" report that continues to indicate insufficient corrective actions have been taken to address inadequate financial management, lack of appropriate internal controls, and/or issues or trends that indicate possible financial failure of the company.**

3.3 A fire department or ambulance company may voluntarily submit a full financial audit rather than a review audit if it chooses to do so.

4.0 Audit Periods.

4.1 Any company whose fiscal year begins on or after January 1, 2009 must file an audit no later than six and one-half months after the close of the company's fiscal year. Audits shall be submitted annually thereafter no later than six and one-half months after the close of the company's fiscal year. The audit due date will be calculated by the Commission based on the information provided by the volunteer fire and/or ambulance company as to the close of its fiscal year.

4.2 No extensions will be granted except upon a showing of hardship. Requests for a hardship extension must be made in writing prior to the audit due date. The request must specify in detail the nature of the hardship. A showing of hardship requires that the lack of compliance with this regulation is due to causes beyond the company's control. The Commission's decision on the extension request shall be final.

5.0 Audit Compliance Committee.

5.1 The Commission shall appoint an Audit Compliance Committee to review audit submissions. The Audit Compliance Committee shall consist of at least of three (3) members who shall be appointed annually at the January meeting of the Commission. The members of the Audit Compliance Committee shall have a professional background that includes auditing and financial experience.

5.2 The Audit Compliance Committee will review the audit for compliance with the regulations and will look for any auditor comments that indicate inadequate financial management, lack of appropriate internal controls, and/or issues or trends that indicate possible financial failure of the company. The Audit Compliance Committee shall report to the Commission as follows:

5.2.1 Audits that are approved will be forwarded to the Commission with a recommendation for filing with no further action.

5.2.2 Fire department and ambulance companies that fail to file the mandatory financial audits will be referred to the Commission with a recommendation for a hearing before the Commission for the imposition of civil penalties as provided in 16 Del.C. §6622 (b) and any other penalties available under the Chapter.

5.2.3 Any audit showing financial irregularities will be referred to the Commission with a summary of the deficiencies and a recommendation for a hearing before the Commission to establish a written corrective action plan and/or the imposition of civil penalties as provided in 16 Del.C. §6622 (b) and any other penalties available under the Chapter.

5.3 The Audit Compliance Committee may require the volunteer fire or ambulance company to submit such additional documentation as may be necessary for clarification in order for the Audit Compliance Committee to make a decision as to whether referral to the Commission for further action is warranted. Failure to comply with the Audit Compliance Committee's request for additional documentation will result in referral to the Commission for a hearing.

6.0 Audit Compliance Hearings.

6.1 The Commission shall schedule a hearing within thirty (30) days of receiving a referral from the Audit Compliance Committee.

6.2 Notice of the time and place of the hearing shall be personally served, or sent by registered mail to the address provided by the fire department or ambulance company at the time of the audit submission, with return requested, to the fire department or ambulance company at least twenty (20) days prior to the date fixed for the hearing.

6.3 Hearings will be conducted in accordance with the hearing procedures set forth in Commission Regulations, Part 1, Regulation 1-7.6.

6.4 The fire department or ambulance company that is the subject of the hearing will be provided with a copy of the Audit Compliance Committee's report to the Commission.

7.0 Sanctions for Non-compliance.

- 7.1 Where the Commission has determined, upon notice and hearing, that a fire department or ambulance company failed to file or has filed incomplete audits in violation of 16 Del.C. §6622, the Commission may impose a civil penalty of \$100 per day beginning on the date the audit was due. Each day a violation continues may be deemed a separate offense in the Commission's discretion resulting in penalties of up to \$5000 per reporting. The civil penalty is in addition to any other penalties provided for in the Chapter.
- 7.2 Where the Commission has determined, upon notice and hearing, that the audits of a fire department or ambulance company indicate inadequate financial management, lack of appropriate internal controls, and/or issues or trends that indicate possible financial failure of the company the Commission may require a written corrective action plan. Failure to submit a written corrective action plan may result in the imposition of a civil penalty of \$100 per day. Each day a violation continues may be deemed a separate offense in the Commission's discretion resulting in penalties of up to \$5000 per reporting. The civil penalty is in addition to any other penalties provided for in the Chapter.
- 7.3 Continued failure to file audits or to take corrective action may also result in the Commission referring the fire department or ambulance company to other regulatory agencies for review and possible action under their governing authority, including but not limited to, the Internal Revenue Service, the Delaware Division of Revenue and the State Auditor's Office.

8.0 Audit Documents

- 8.1 Audit submissions filed with the Commission may be considered public records under the Freedom of Information Act ("FOIA"). The records will not be released except pursuant to a valid FOIA request or subpoena. The volunteer fire department or ambulance company will be given notice of the request. It will be the responsibility of the volunteer fire department or ambulance company to challenge the request in the appropriate court within the time specified by the Commission in the notice; otherwise, the records will be released.

DEPARTMENT OF EDUCATION

Office of the Secretary

Statutory Authority: 14 Delaware Code, Sections 122(b) and 154(e)
(14 Del.C. §122(b) and §154(e))
14 DE Admin. Code 540

Education Impact Analysis Pursuant to 14 Del.C. Section 122(d)

540 Driver Education

A. Type of Regulatory Action Required

Amendment to Existing Regulation

B. Synopsis of Subject Matter of the Regulation

The Secretary of Education seeks the consent of the State Board of Education to amend 14 DE Admin. Code 540 Driver Education in order to clarify that Delaware nonpublic school (private and homeschool) students are entitled to tuition-based driver education at rates approved by the co-chairs of the Joint Finance Committee, Delaware General Assembly.

Persons wishing to present their views regarding this matter may do so in writing by the close of business on or before October 6, 2008 to Susan Haberstroh, Education Associate, Regulation Review, Department of Education,

at 401 Federal Street, Suite 2, Dover, Delaware 19901. A copy of this regulation is available from the above address or may be viewed at the Department of Education business office.

C. Impact Criteria

1. Will the amended regulation help improve student achievement as measured against state achievement standards? The amendment relates to driver education not student achievement as measured against state achievement standards.

2. Will the amended regulation help ensure that all students receive an equitable education? The amendment relates to driver education and ensures all students receive equitable driver education.

3. Will the amended regulation help to ensure that all students' health and safety are adequately protected? The amended regulation deals with driver education, not students' health and safety.

4. Will the amended regulation help to ensure that all students' legal rights are respected? The amended regulation will ensure that all students' legal rights are respected.

5. Will the amended regulation preserve the necessary authority and flexibility of decision making at the local board and school level? The amended regulation will preserve the necessary authority and flexibility of decision making at the local board and school level.

6. Will the amended regulation place unnecessary reporting or administrative requirements or mandates upon decision makers at the local board and school levels? The amended regulation will not place unnecessary reporting or administrative requirements or mandates upon decision makers at the local board and school levels.

7. Will the decision making authority and accountability for addressing the subject to be regulated be placed in the same entity? The decision making authority and accountability for addressing the subject to be regulated will be placed in the same entity.

8. Will the amended regulation be consistent with and not an impediment to the implementation of other state educational policies, in particular to state educational policies addressing achievement in the core academic subjects of mathematics, science, language arts and social studies? The amended regulation addresses driver education not the core academic subject.

9. Is there a less burdensome method for addressing the purpose of the regulation? There is no less burdensome method for addressing the purpose of the regulation.

10. What is the cost to the State and to the local school boards of compliance with the regulation? There is no cost to the State and to the local school boards of compliance with the amended regulation.

540 Driver Education

1.0 Eligibility for Driver Education

- 1.1 Delaware public school residents are entitled to free driver education one time only. Delaware nonpolitical school (private and homeschool) students are entitled to tuition-based driver education at rates approved by co-chairs of the Joint Finance Committee, Delaware General Assembly. Students who are not successful in their initial driver education course may register in any of the adult driver education programs for a fee.
- 1.2 The Individualized Education Program Team, in consultation with the Driver Education teacher, may make accommodations to the Driver Education program and offer specialized instruction for special education students through the student's Individual Education Program (I.E.P.).
- 1.3 Nothing in this regulation shall alter a school's duties under Section 504 of the Rehabilitation Act of 1973 or the Americans with Disabilities Act to students who are qualified individuals with disabilities. Nothing in this regulation shall prevent a school from providing driver education to such students.
- 1.4 Delaware residents attending school out of state as 10th graders, students in excess of the September 30th unit allotment, ~~students attending private and parochial academies in state with 10th grade enrollments of less than twenty five, home schooled students~~ and any student approved by the

Secretary as an exceptional case are entitled to attend summer driver education without charge. Students attending private schools in state with 10th grade enrollments of less than twenty five, and homeschool students shall be entitled to attend tuition-based summer driver education at rates approved by the co-chairs of the Joint Finance Committee, Delaware General Assembly. Districts shall notify all nonpublic and public high schools in their district by May 1st annually as to the location of the nearest summer driver education program. Summer Driver Education shall be offered between June 10 and August 31 and each request for free tuition must be approved by the Secretary of Education through the ~~Office of the Education Associate, Safety and Driver Education~~ Office of the Director of Career & Technical Education and School Climate.

- 1.5 Adult Driver Education programs, when offered, shall follow the same regulations established for the high school and the summer programs. The adult programs are available to any individual for a fee through a local school district in each county. The cost per student for adult driver education will be determined by the Department of Education.

2.0 Requirements for Class Time

- 2.1 The driver education course shall include a minimum of forty four (44) class hours of instruction consisting of thirty (30) class hours of classroom instruction, seven (7) class hours of in the car behind the wheel laboratory instruction and seven (7) hours of actual observation in the car. The class hours must not be less than forty five (45) minutes each. For those schools with varying class schedules the minimum classroom instruction must be no less than one thousand three hundred fifty (1350) minutes and behind the wheel laboratory instruction no less than three hundred fifteen (315) minutes.
- 2.2 Driving simulators may be substituted for the required hours of behind the wheel laboratory instruction but only up to three (3) hours of time at the ratio of four (4) hours of driving simulation to one (1) hour of actual behind the wheel laboratory instruction.
- 2.3 Off the street driving ranges or multiple driving ranges that are off the street may be substituted for actual behind the wheel laboratory instruction up to three (3) hours time at the ratio of two (2) hours of range instruction time to one (1) hour of actual behind the wheel laboratory instruction time.
- 2.4 Driving simulation and off the street driving range time shall not be taken from or cause a reduction of classroom instruction time.
- 2.5 Driving simulation and off the street driving range time shall not be substituted for more than one half (1/2) of the total required seven (7) hours of actual behind the wheel laboratory instruction and only at the ratios defined in 2.0. This includes individually or in any combination.

3.0 Curriculum

- 3.1 The Driver Education teachers shall use the statewide curriculum for driver education developed by the Department of Education for classroom instruction and behind the wheel laboratory instruction time. Teachers should include student activities requiring reading, writing and research as part of the Driver Education curriculum.

4.0 Final Grades

- 4.1 Final grades for the forty four hour driver education course shall be either pass or fail. Schools may grant one fourth (1/4) credit for successful completion of the minimum hours in both the classroom and the behind the wheel laboratory experience. The one fourth of a credit for driver education may be included as part of the elective credits counted toward graduation.
- 4.2 Pass or Fail grades must be received by the Department of Education no later than June 30th for Regular Driver Education Programs and August 31st for Summer Driver Education Programs. Final grades will be maintained by the Department for a seven year period.

5.0 Use of Driver Education Cars

- 5.1 Automobiles purchased, leased from Fleet Services or leased directly from a dealership using state funds allocated for driver education shall be used solely for the instruction of students enrolled in

PROPOSED REGULATIONS

Driver Education; except that a school district or charter school may permit a driver education teacher to drive such automobile to and from the teacher's place of residence when the school district or charter school determines that it would be unsafe to store the automobile overnight at the school, ~~and further provided that in the case of a private school driver education teacher, the Education Associate, Safety and Driver Education at the Department of Education may permit that teacher to drive the automobile to and from school from the teacher's place of residence~~ The Director of Career & Technical Education and School Climate shall assign private school driver education teachers a state parking location to store the vehicle overnight when it appears that it would be unsafe to store the automobile overnight at the school.

6.0 Scheduling of Driver.

- 6.1 All public and nonpublic high schools with twenty five or more enrolled 10th grade students shall offer Driver Education as part of the curriculum.

1 DE Reg. 964 (1/1/98)

6 DE Reg. 773 (12/1/02)

10 DE Reg. 1587 (04/01/07)

DEPARTMENT OF HEALTH AND SOCIAL SERVICES Division of Medicaid and Medical Assistance

Statutory Authority: 31 Delaware Code, Section 512 (31 Del.C. §512)

PUBLIC NOTICE

Medical Assistance During Transition to Medicare Program Attachment 2.2-A, Page 18 and Supplement 6 to Attachment 2.6-A DSSM 17800

In compliance with the State's Administrative Procedures Act (APA - Title 29, Chapter 101 of the **Delaware Code**) and under the authority of Title 31 of the **Delaware Code**, Chapter 5, Section 512, Delaware Health and Social Services (DHSS) / Division of Medicaid and Medical Assistance (DMMA) is proposing to amend the Title XIX Medicaid State Plan and the Division of Social Services Manual (DSSM) concerning covered groups of optional categorically needy individuals.

Any person who wishes to make written suggestions, compilations of data, testimony, briefs or other written materials concerning the proposed new regulations must submit same to Sharon L. Summers, Planning & Policy Development Unit, Division of Medicaid and Medical Assistance, 1901 North DuPont Highway, P.O. Box 906, New Castle, Delaware 19720-0906 or by fax to 302-255-4425 by September 30, 2008.

The action concerning the determination of whether to adopt the proposed regulation will be based upon the results of Department and Division staff analysis and the consideration of the comments and written materials filed by other interested persons.

SUMMARY OF PROPOSED AMENDMENT

The proposed amends the Title XIX Medicaid State Plan and the Division of Social Services Manual (DSSM) related to the Medical Assistance during Transition to Medicare Program. The reason for this amendment is to add coverage for a new optional categorically needy Medicaid population group.

Statutory Authority

42 CFR §435.232, *Individuals Receiving Only Optional State Supplements*

Background

The SSI Medical Assistance Transition (MAT) Program was implemented on March 1, 2001. This program was specifically designed to provide Medicaid coverage to SSI beneficiaries who lost SSI benefits (and consequently Medicaid eligibility) due to the receipt of Social Security Disability Income (SSDI) benefits. This extension of Medicaid coverage was made possible by establishing an Optional State Supplement program which satisfies federal requirements for Medicaid Federal Financial Participation (FFP). The Title XIX Medicaid State Plan defines this group as *"Individuals who lose SSI due to receipt of Social Security Disability Income and are not yet eligible for Medicare."*

Summary of Proposed Amendment

The Medicaid State Plan and the Division of Social Services Manual (DSSM) will be amended to provide coverage to those individuals, not previously receiving SSI, who may be eligible for Medicaid based solely on income and who lose eligibility due to the receipt of Social Security Disability Income (SSDI), which exceed Medicaid eligibility guidelines. Effective September 1, 2008, eligibility would be for any individual who lost eligibility for Medicaid on or after January 1, 2008 due to the receipt of SSDI and does not have Medicare coverage.

The provisions of this amendment are subject to approval by the Centers for Medicare and Medicaid Services (CMS).

This proposed regulation is also published concurrently herein under "Emergency Regulations".

DMMA PROPOSED REGULATION #08-39a

REVISIONS:

Revision:	HCFA-PM-91-4	(BPD)	ATTACHMENT 2.2-A Page 18 OMB NO.: 0938
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State: DELAWARE

Agency*	Citation(s)	Groups Covered
	C.	Optional Groups Other Than the Medically Needy (Continued)
	_____ (4)	Aged individuals in domiciliary facilities or other group living arrangements as defined under SSI.
	_____ (5)	Blind individuals in domiciliary facilities or other group living arrangements as defined under SSI.
	_____ (6)	Disabled individuals in domiciliary facilities or other group living arrangements as defined under SSI.
	_____ (7)	Individuals receiving federally

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administered optional State supplement that meets the conditions specified in 42 CFR 435.230.

_____(8) Individuals receiving a State administered optional State supplement that meets the conditions specified in 42 CFR 435.230.

___X___(9) Individuals in additional classifications approved by the Secretary as follows:
~~Individual who lose SSI due to receipt of Social Security Disability and are not yet eligible for Medicare.~~
Individuals who lose eligibility for Medicaid due to the receipt of Social Security Disability Insurance and are not yet eligible for Medical

(Break In Continuity of Sections)

Revision: HCFA-AT-85-3
 FEBRUARY 1985

SUPPLEMENT 6 TO
 ATTACHMENT 2.6-A

State: DELAWARE

Standards for Optional State Supplementary Payments

PAYMENT CATEGORY (REASONABLE CLASSIFICATION)	FEDERAL	STATE	INCOME		LEVELS		INCOME DISREGARDS EMPLOYED
			GROSS 1 Person	Couple	NET 1 Person	Couple	
(1)	(2)	(3)			(4)		(5)
Individuals Residing in Adult Foster Care Homes	X	SSI + \$140 + \$20			SSI + \$140		Disregards According to the SSI Program

Individuals Who Lose SSI Eligibility for Medicaid Due to Receipt of Social Security Disability Insurance and Are Not Yet Eligible for Medicare		X	\$5.00		\$5.00		All Income is Excluded
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DMMA PROPOSED REGULATION #08-39b

REVISIONS:

17800 Medical Assistance during Transition to Medicare

Under 42 CFR 435.232 Medicaid may be provided to individuals who receive only an optional State supplement and who would be eligible for SSI except for the level of their income.

The rules in this section set forth the eligibility requirements for coverage under this state-administered Optional State Supplementation group - Medical Assistance during Transition to Medicare (MAT). The MAT group is implemented with the earliest effective date of February 1, 2004 March 1, 2001. Eligibility under this group is not retroactive.

17801 Status Eligibility

In addition to the general Medicaid eligibility requirements listed in DSSM 14000 - ~~44950.7~~ 14960, the individual ~~meets all the conditions listed below~~ must meet the following conditions:

- a) received SSI, and
- b) ~~lost eligibility for SSI because of Social Security Disability~~ lost eligibility for SSI due to the receipt of Social Security Disability Insurance, and
- c) does not have Medicare coverage, ~~and,~~
- d) ~~is not an inmate in a public institution. An individual is an inmate when serving time for a criminal offense or confined involuntarily in State or Federal prisons, jail, detention facilities, or other penal facilities. An individual awaiting trial in a detention center is considered an inmate of a public institution~~
- e) ~~an annual redetermination is completed. A redetermination is a re-evaluation of a recipient's continued eligibility for medical assistance. In a redetermination, all eligibility factors are re-examined to ensure that the recipient continues to meet categorical eligibility requirements. When a redetermination is due, the recipient is required to complete and return a new DSS application form. A redetermination is complete when all eligibility factors are examined and a decision regarding continued eligibility is reached.~~

Effective September 1, 2008, coverage under the MAT group is extended to an individual who:

- a) lost eligibility for Medicaid on or after January 1, 2008, due to the receipt of Social Security Disability Insurance, and
- b) does not have Medicare coverage.

17802 Financial Eligibility

All income and resources are excluded.

17803 Eligibility Determination

~~DSS will receive the names of individuals who lose SSI via the monthly State Data Exchange (SDX). When an individual loses Medicaid eligibility because of the loss of SSI, Federal regulations require a redetermination of~~

PROPOSED REGULATIONS

~~Medicaid eligibility based upon information obtained through the SDX file. A new application is not required. The SSI Unit will use the information obtained from the SDX to redetermine Medicaid eligibility.~~

When an individual loses Medicaid eligibility, a redetermination will be completed to the extent possible based on information contained in the individual's file. An application form may be required if additional or updated information is needed for the redetermination.

17804 Income Standard

The income standard is \$5.00.

17805 Payment Level

Countable income is deducted from the income standard.

DIVISION OF SOCIAL SERVICES

Statutory Authority: 31 Delaware Code, Section 512 (31 Del.C. §512)

PUBLIC NOTICE

3006 TANF Employment and Training Program

In compliance with the State's Administrative Procedures Act (APA - Title 29, Chapter 101 of the **Delaware Code**) and under the authority of Title 31 of the **Delaware Code**, Chapter 5, Section 512, Delaware Health and Social Services (DHSS) / Division of Social Services (DSS) is proposing to amend the Division of Social Services Manual (DSSM) regarding the TANF Employment & Training Program.

Any person who wishes to make written suggestions, compilations of data, testimony, briefs or other written materials concerning the proposed new regulations must submit same to Sharon L. Summers, Policy & Program Development Unit, Division of Social Services, 1901 North DuPont Highway, P.O. Box 906, New Castle, Delaware 19720-0906 or by fax to (302) 255-4425 by September 30, 2008.

The action concerning the determination of whether to adopt the proposed regulation will be based upon the results of Department and Division staff analysis and the consideration of the comments and written materials filed by other interested persons.

SUMMARY OF PROPOSAL

The purpose of this regulatory action is to amend the Division of Social Services Manual (DSSM) regarding mandatory participants in the Temporary Assistance for Needy Families (TANF) Employment & Training Program.

Statutory Authority

- 45 CFR §261.2(n)(2)(i), *Work-eligible individual*
- 45 CFR 261.22(c)(1), *How will we determine a State's overall work rate?*

Background

Reference is made to the final rule reauthorizing the TANF Program at 73 FR 6821 (Federal Register, Volume 73, Page 6821, and dated February 5, 2008). This final rule implements changes to the Temporary Assistance for Needy Families (TANF) program required by the Deficit Reduction Act of 2005 (DRA) (Pub. L. 109-171). The DRA reauthorized the TANF program through Fiscal Year (FY) 2010.

The DRA required States to implement certain work requirements effective October 1, 2006. The DRA included provisions to ensure consistent measurement of work participation rates, including defining work activities,

determining the circumstances under which a parent who resides with a child who is a recipient of assistance should be required to participate in work activities. It also required States to establish and maintain work participation verification procedures. The effective date of the final rule is October 1, 2008

Summary of Proposed Changes

DSSM 3006.1, Mandatory Participants: The rule defines a parent needed to remain home to care for a family member with a disability as not “work-eligible” if there is medical documentation to support the need for the parent to remain in the home to provide that care. The text is also reformatted to increase clarity.

DSS PROPOSED REGULATION #08-35

REVISIONS:

3006 TANF Employment and Training Program

Delaware's Temporary Assistance ~~For~~ for Needy Families (TANF) welfare reform effort is based on the idea that TANF is a transitional benefit and should not become a way of life. The Division maintains that the way for persons to avoid TANF dependency is for them to find and maintain employment.

3006.1 Mandatory Participants

(45 CFR §261.2 (n)(2)(i))

All adult caretakers and other adults in the assistance unit who are not exempt must participate in Employment and Training related activities. ~~The two~~ four possible exemptions are:

- 1) ~~a~~ A single parent caring for a child under 12 months of age. ~~or~~ This exemption has a lifetime limit of 12 months.
- 2) ~~a~~ An individual determined unemployable by a health care professional.
- 3) On a case-by-case basis, clients who are victims of Domestic Violence.
- 4) A parent caring for a disabled family member* who lives in the home.

* A parent or spouse can be excluded to care for a **child** or a **spouse** as long as the following conditions apply:

1. The parent is biological, adoptive or step.
2. The parent or spouse lives in the home with the child.
3. The need for such care is supported by medical documentation.
4. The spouse of a parent can use the caring for exemption even though the marriage is terminated by death or divorce.

Children age 16 or older who are not attending school must participate in work or other alternative activities, e.g., GED.

Individuals who are exempt from Employment and Training requirements can volunteer to participate in the Employment and Training Program. Individuals with disabilities will be afforded the same access and opportunities, including reasonable accommodations, to participate in the Employment and Training programs.

PROPOSED REGULATIONS

DEPARTMENT OF NATURAL RESOURCES AND ENVIRONMENTAL CONTROL**Division of Air and Waste Management**

Statutory Authority: 7 Delaware Code, Section 6010, (7 **Del.C.** §6010)
7 **DE Admin. Code** 1147

REGISTER NOTICE**SAN#2008 - 05****1147 CO₂ Budget Trading Program****1. TITLE OF THE REGULATION:**

Regulation 1147 *CO₂ Budget Trading Program*

2. BRIEF SYNOPSIS OF THE SUBJECT, SUBSTANCE AND ISSUES:

This new regulation will create Delaware's portion of a multi-state Carbon Dioxide (CO₂) Budget Trading Program. The Budget Trading also known as a cap-and-trade program was developed by the Regional Greenhouse Gas Initiative, or RGGI, which is a cooperative effort amongst a number of Northeastern and Mid-Atlantic States which include Connecticut, Delaware, Maine, Maryland, Massachusetts, New Hampshire, New Jersey, New York, Rhode Island and Vermont. The purpose of RGGI is to reduce the emissions of CO₂ from the Power Sector's Electric Generating Units (EGUs). CO₂ is a greenhouse gas that contributes to global warming.

Between 2009 and 2015 the emissions of CO₂ from any EGU with a maximum rated heat input capacity of equal to or greater than 25 megawatts that is located in a RGGI state would be capped at current levels. After 2015 the cap would be reduced incrementally to achieve a 10 percent reduction by 2019. Under the cap-and-trade program one allowance will be issued for each ton of CO₂ emissions allowed by the cap. Each subject EGU will be required to have enough allowances to cover its reported emissions each year. The EGUs may buy or sell allowances, but individual EGU emissions shall not exceed the amount of allowances it possesses. The total amount of the allowances will be equal to the emissions cap for the RGGI states. Section 11 of these proposed regulations constitutes the elements of the auction program that must be published in the *Register of Regulations* as required by 7 **Del.C.** section 6045(b).

3. POSSIBLE TERMS OF THE AGENCY ACTION:

None

4. STATUTORY BASIS OR LEGAL AUTHORITY TO ACT:

7 **Del.C.**, Chapter 60, Environmental Control

5. OTHER REGULATIONS THAT MAY BE AFFECTED BY THE PROPOSAL:

PM2.5 SIP and REGIONAL HAZE SIP, Regulation(s) 1102, 1130

6. NOTICE OF PUBLIC COMMENT:

Public Hearing scheduled September 22, 2008 6:00 pm DNREC Auditorium, Richardson & Robbins Building, 89 Kings Highway, Dover, DE 19901

7. PREPARED BY:

Valerie Gray

(302) 739-9402

August 1, 2008

Please Note: Due to the size of the proposed regulation, it is not being published here. Copies are available at:

Budget Trading Program

DEPARTMENT OF STATE PUBLIC SERVICE COMMISSION

Statutory Authority: 26 Delaware Code, Section 209(a) (26 **Del.C.** §209(a))

PUBLIC NOTICE

IN THE MATTER OF THE ADOPTION OF		
RULES TO IMPLEMENT THE RENEWABLE ENERGY		
PORTFOLIO STANDARDS ACT, 26 DEL.C. §§ 351- 363,		
AS APPLIED TO RETAIL ELECTRICITY SUPPLIERS		PSC REGULATION DOCKET NO. 56
(OPENED AUGUST 23, 2005; RE-OPENED		
SEPTEMBER 4, 2007; RE-OPENED		
AUGUST 5, 2008)		

ORDER NO. 7422

This 5th day of August, 2008, the Commission determines and Orders the following:

1. In 2005 the General Assembly and the Governor enacted the "Renewable Energy Portfolio Standards Act," 26 **Del.C.** §§351-363 (2006 Supp.) ("the Act"). The Act requires each electric supplier to annually accumulate a portfolio of "renewable energy credits" ("RECs") equivalent to a specified percentage of its retail electric supply sales within this State, or to make "alternative compliance payments" in lieu of the acquisition of RECs. The obligation began in 2007 and the required percentages of renewable energy sales increase each year. In 2006, exercising the authority granted under 26 **Del.C.** §362 (2006 Supp.), the Commission promulgated "Rules and Procedures to Implement the Renewable Energy Portfolio Standard" ("RPS Rules"). See PSC Order No. 6931 (June 6, 2006).¹

2. In July of 2007, the Act was modified (1) to increase the percentages of retail sales that electric suppliers must meet with renewable energy credits, (2) to require that electric suppliers acquire solar renewable energy credits (or make solar alternative compliance payments), and (3) to provide for the statutory increases to the dollar amounts of alternative compliance payments for renewable credits. See 26 **Del.C.** §§352(22)-(23), 354(a), 356(a), 358(d) and (e) as amended. After conducting a rulemaking proceeding, the Commission adopted amendments to its RPS Rules to reflect the statutory changes. PSC Order No. 7377 (Apr. 17, 2008).

3. In the recently-ended legislative session, the General Assembly and Governor enacted two additional changes to the Act which will impact treatment of RECs derived from certain off-shore wind energy installations and will affect cost recovery of contracts entered into under 26 **Del.C.** §1007(d), which section is being implemented at this time via PSC Docket No. 06-241. See 76 Del. Laws ch. 248 §§ 1-2 (June 25, 2008) ("Chapter 248"). The Commission now proposes to adopt revisions and amendments to its RPS Rules to incorporate, and assure consistency with, the statutory changes made by Chapter 248. The revised RPS Rules, prepared by Staff and now being proposed for adoption, are set forth as Exhibit "A" to this Order.

1. The RPS Rules (attached as Exhibit "A") were formally published at 10 DE Reg. 151-157 (July 1, 2006). Municipal electric utilities and the now self-regulated Delaware Electric Cooperative, Inc., can choose to be exempt from the Act's requirements by pursuing an alternative regime for supporting "renewable energy" resources. See 26 Del. C. §§ 353(a), 363 (2006 Supp.).

4. The Commission continues to hold the authority to issue rules to implement the Act. See 26 **Del.C.** §362 (2006 Supp.). As noted, the proposed revisions are intended to mirror the recent changes in the statutory requirements. Accordingly, the revisions (1) incorporate the new 350% credit multiplier for energy derived from off-shore wind energy installations sited off the Delaware Coast on or before May 31, 2017, and (2) call for the costs arising out of contracts entered into by a Commission-regulated electric company pursuant to 26 **Del.C.** §1007(d) to be distributed among the entire Delaware customer base of such companies through an adjustable non-bypassable charge which shall be established by the Commission. Sections 3.2.9 and 4.4, respectively.

Now, therefore, **IT IS ORDERED:**

1. That, for the reasons set forth in the body of this Order, and pursuant to 26 **Del.C.** §362 and 29 **Del.C.** §10115, the Commission proposes to revise its "Rules and Procedures to Implement the Renewable Energy Portfolio Standard," last revised by PSC Order 7377 (Apr. 17, 2008) and published at 11 DE Reg. 1670-1678 (June 1, 2008). The proposed revised Rules, which include the changes, amendments, and revisions now being proposed for adoption, are attached to this Order, in a red-lined version, as Exhibit "A."

2. That, pursuant to 29 **Del.C.** §§1133 and 10115(a), the Secretary shall transmit to the Registrar of Regulations for publication in the *Delaware Register of Regulations* a copy of this Order and a copy of the revised, red-lined "Rules and Procedures to Implement the Renewable Energy Portfolio Standard" now being proposed for adoption (Exhibit "A").

3. That, in addition, the Secretary shall transmit the Notice of Proposed Rule-Making, attached as Exhibit "B," to the Registrar of Regulations for publication in the *Delaware Register of Regulations*. In addition, the Secretary shall cause such Notice of Proposed Rule-Making to be published in *The News Journal* and the *Delaware State News* newspapers on September 2, 2008. The Secretary shall include proof of such publication in the docket file before the public hearing in this matter. Further, the Secretary shall serve (by regular mail or by electronic e-mail) a copy of such Notice on: (a) the Division of the Public Advocate; (b) the State Energy Office; (c) Delmarva Power & Light Company; (d) all certificated electric suppliers; and (e) each person or entity who has made a timely request for advance notice of regulation-making proceedings.

4. That, pursuant to 29 **Del.C.** §§10115(a) and 10116, persons or entities may file written comments, suggestions, compilations of data, briefs, or other written materials, on or before September 30, 2008. Pursuant to 29 **Del.C.** §10117, the Commission will conduct a public hearing on the proposed revisions and resulting new "Rules and Procedures to Implement the Renewable Energy Portfolio Standard" on November 13, 2008 beginning at 10:00 AM at the Commission's office at 861 Silver Lake Boulevard, Cannon Building, Suite 100, Dover, Delaware.

5. That, pursuant to 26 **Del.C.** §502 and 29 **Del.C.** §10116, Hearing Examiner Mark Lawrence is designated to supervise the comment period and to conduct the public hearing. Thereafter, Hearing Examiner Lawrence shall organize, classify, and summarize the materials and comments and file a Report with the Commission with his recommendations concerning the proposed revisions to the "Rules and Procedures to Implement the Renewable Energy Portfolio Standard." Hearing Examiner Lawrence is specifically delegated the power, under 26 **Del.C.** §102A, to determine the content and manner of any further public notices that might be necessary or appropriate. Hearing Examiner Lawrence may also conduct further proceedings, including additional hearings, as may be necessary or appropriate.

6. That James McC. Geddes, Esquire, is designated Staff Counsel for this matter.

7. That, pursuant to 26 **Del.C.** §§114 & 1012(c)(2), all electric suppliers and electric public utilities are hereby notified that they may be charged the costs of this proceeding.

8. The Commission reserves the jurisdiction and authority to enter such further Orders in this matter as may be deemed necessary or proper.

BY ORDER OF THE COMMISSION:

Arnetta McRae, Chair

Joann T. Conaway, Commissioner

Dallas Winslow, Commissioner

Jaymes B. Lester, Commissioner

ATTEST:

Karen J. Nickerson, Secretary

NOTICE OF PROPOSED RULE-MAKING AMENDING "RULES AND PROCEDURES TO IMPLEMENT THE RENEWABLE ENERGY PORTFOLIO STANDARD"

TO: ALL ELECTRIC SUPPLIERS, ELECTRIC UTILITIES, ELECTRIC GENERATORS USING RENEWABLE RESOURCES, AND OTHER INTERESTED PERSONS

Under the "Renewable Energy Portfolio Standards Act," 26 **Del.C.** §§351-363 (2006 Supp.) ("the Act"), each electric supplier making retail electric sales in Delaware must, beginning in 2007, accumulate a portfolio of "renewable energy credits" equivalent to a specified percentage of its overall retail electric supply sales. In 2006, the Public Service Commission ("PSC") adopted its "Rules and Procedures to Implement the Renewable Energy Portfolio Standard" ("RPS Rules"), which were revised in April of 2008 to reflect legislative changes to the Act enacted in 2007. See 11 DE Reg. 1670-1678 (June 1, 2008).

On June 25, 2008, the General Assembly and Governor enacted two additional provisions to the Act. See 76 **Del. Laws** ch. 248 §§ 1-2 (June 25, 2008) ("Chapter 248"). In light of those statutory amendments, the PSC now proposes revisions to its RPS Rules to have those rules reflect, and be consistent with, the recent statutory changes. See PSC Order No. 7422 (Aug. 5, 2008). Accordingly, the revisions (1) incorporate the new 350% credit multiplier for energy derived from off-shore wind energy installations sited off the Delaware Coast on or before May 31, 2017, and (2) call for the costs arising out of contracts entered into by a Commission-regulated electric company pursuant to 26 **Del.C.** §1007(d) to be distributed among the entire Delaware customer base of such companies through an adjustable non-bypassable charge. The PSC is authorized to make rules to implement the Act under 26 **Del.C.** §362.

You can review PSC Order No. 7422 (Aug. 5, 2008) and the proposed revised RPS Rules in the September 1, 2008 issue of the *Delaware Register of Regulations*. You can also review the Order and the proposed, revised RPS Rules, at the PSC's Internet website located at <http://depssc.delaware.gov>. If you wish to have written copies of the Order and proposed revised Rules, you can obtain them at the PSC's office at the address located below for \$0.25 per page.

The PSC now solicits comments, suggestions, compilations of data, briefs, or other written materials about the proposed revisions to its RPS Rules. If you wish to file any such materials, you should submit an original and ten copies of such written documents on or before September 30, 2008. You should file such materials with the PSC at the following address:

Public Service Commission
861 Silver Lake Boulevard
Cannon Building
Suite 100
Dover, Delaware, 19904
Attn: Reg. Dckt. No. 56

If possible, you should accompany such written comments with an electronic version of the submission. Such electronic copy may be filed on a copy-capable CD-Rom disk or sent as an attachment to an Internet e-mail addressed to karen.nickerson@state.de.us.

The PSC will also conduct a public evidentiary hearing on the new proposed regulations on Thursday, November 13, 2008 at 10:00 AM at the Commission's office at the address set forth above. You may also submit comments and materials at such public evidentiary hearing.

If you are disabled and need assistance or help to participate in the proceedings, please contact the PSC to discuss that assistance. If you want more information or have questions, you can contact the PSC about this matter at (800) 282-8574 (toll-free in Delaware) or (302) 736-7500. Inquiries can also be sent by Internet e-mail addressed to pamela.knotts@state.de.us.

3008 Rules and Procedures to Implement the Renewable Energy Portfolio Standard (Opened August 23, 2005)

1.0 Definitions

1.1 The following words and terms, when used in this Regulation, should have the following meanings unless the context clearly indicates otherwise:

"Alternative Compliance Payment" or "ACP" means a payment of a certain dollar amount per megawatt hour, which a Retail Electricity Supplier may submit in lieu of supplying the minimum percentage of RECs required under Section 3.3.4 of this Regulation.

"Commission" means the Delaware Public Service Commission.

"Compliance Year" means the calendar year beginning with June 1 and ending with May 31 of the following year, for which a Retail Electricity Supplier must demonstrate that it has met the requirements of this Regulation.

"Customer-Sited Generation" means a Generation Unit that is interconnected on the End-Use Customer's side of the retail electricity meter in such a manner that it displaces all or part of the metered consumption of the End-Use Customer.

"DNREC" means Delaware Department of Natural Resources and Environmental Control.

"Eligible Energy Resources" means the following energy sources located within the PJM region or imported into the PJM region and tracked through the PJM Market Settlement System:

"Solar Photovoltaic Energy Resources" means solar photovoltaic or solar thermal energy technologies that employ solar radiation to produce electricity or to displace electricity use;

Electricity derived from wind energy;

Electricity derived from ocean energy including wave or tidal action, currents, or thermal differences;

Geothermal energy technologies that generate electricity with a steam turbine, driven by hot water or steam extracted from geothermal reservoirs in the earth's crust;

Electricity generated by a fuel cell powered by Renewable Fuels;

Electricity generated by the combustion of gas from the anaerobic digestion of organic material;

Electricity generated by a hydroelectric facility that has a maximum design capacity of 30 megawatts or less from all generating units combined that meet appropriate environmental standards as determined by DNREC (see DNREC Regulation's Secretary's Order No. 2006-W-0027);

Electricity generated from the combustion of biomass that has been cultivated and harvested in a sustainable manner as determined by DNREC, and is not combusted to produce energy in a waste to energy facility or in an incinerator (see DNREC Regulation's Secretary's Order No. 2006-W-0027);

Electricity generated by the combustion of methane gas captured from a landfill gas recovery system; provided, however, that:

Increased production of landfill gas from production facilities in operation prior to January 1, 2004 demonstrates a net reduction in total air emissions compared to flaring and leakage;

Increased utilization of landfill gas at electric generating facilities in operation prior to January 1, 2004 (i) is used to offset the consumption of coal, oil, or natural gas at those facilities, (ii) does not result in a reduction in the percentage of landfill gas in the facility's average annual fuel mix when calculated using fuel mix measurements for 12 out of any continuous 15 month period during which the electricity is generated, and (iii) causes no net increase in air emissions from the facility; and

Facilities installed on or after January 1, 2004 meet or exceed 2004 Federal and State air emission standards, or the Federal and State air emission standards in place on the day the facilities are first put into operation, whichever is higher.

"End-Use Customer" means a person or entity in Delaware that purchases electrical energy at retail prices from a Retail Electricity Supplier.

"Fund" means the Delaware Green Energy Fund.

"GATS" means the Generation Attribute Tracking System developed by PJM-Environmental Information Services, Inc. (PJM-EIS).

"Generation Attribute" means a non-price characteristic of the electrical energy output of a Generation Unit including, but not limited to, the Unit's fuel type, geographic location, emissions, vintage, and RPS eligibility.

"Generation Unit" means a facility that converts a fuel or an energy resource into electrical energy.

"Industrial Customer" means an End-Use Customer with a North American Industry Classification System (NAICS) Manufacturing Sector Code.

"Municipal Electric Company" means a public corporation created by contract between 2 or more municipalities pursuant to provisions of Title 22, Chapter 13 of the **Delaware Code** and the electric utilities that are municipally owned within the State of Delaware.

"New Renewable Generation Resources" means Eligible Energy Resources first going into commercial operation after December 31, 1997.

"Peak Demand" shall have the same meaning as and be determined consistently with how such term or a similar term is defined and determined in the applicable utility's tariff then in effect and approved by the Commission. For customers with more than one account, the peak demands shall be aggregated for all accounts. The calculation will be applied in the current year based on the Peak Demand, as defined above, in the prior year.

"PJM" or **"PJM Interconnection"** means the regional transmission organization (RTO) that coordinates the movement of wholesale electricity in the PJM region, or its successors at law.

"PJM region" means the area within which the movement of wholesale electricity is coordinated by PJM Interconnection. The PJM region is as described in the Amended and Restated Operating Agreement of PJM.

"Renewable Energy Credit" ("REC") means a tradable instrument comprised of all the Generation Attributes equal to 1 megawatt-hour of electricity derived from Eligible Energy Resources and that is used to track and verify compliance with the provisions of this Regulation. A REC does not include emission reduction credits and/or allowances encumbered or used by a Generation Unit for compliance with local, state, or federal operating and/or air quality permits associated with the 1 megawatt-hour of electricity.

"Renewable fuel" means a fuel that is derived from Eligible Energy Resources. This term does not include a fossil fuel or a waste product from a fossil fuel source.

"RPS" and **"Renewable Energy Portfolio Standard"** means the percentage of electricity sales at retail in the State that is to be derived from Eligible Energy Resources.

"Retail Electricity Product" means an electrical energy offering that is distinguished by its Generation Attributes only and that is offered for sale by a Retail Electricity Supplier to End-Use Customers. Multiple electrical energy offerings with the same Generation Attributes may be considered a single Retail Electricity Product.

"Retail Electricity Supplier" means a person or entity that sells electrical energy to End-Use Customers in Delaware, including, but not limited to, non-regulated power producers, electric utility distribution companies supplying standard offer, default service, or any successor service to End-Use Customers. A Retail Electricity Supplier does not include a Municipal Electric Company for the purposes of this Regulation.

"Rural Electric Cooperative" means a non-stock, non-profit, membership corporation organized pursuant to the Federal "Rural Electrification Act of 1936" and operated under the cooperative form of ownership.

PROPOSED REGULATIONS

"**Solar Alternative Compliance Payment**" or "**SACP**" means a payment of a certain dollar amount per megawatt-hour, which a Retail Electricity Supplier or Municipal Electric Supplier may submit in lieu of supplying the Minimum Percentage from Solar Photovoltaic required under Section 3.3.4 of this Regulation.

"**Solar Renewable Energy Credit**" or "**SREC**" means a tradable instrument that is equal to 1 megawatt-hour of retail electricity sales in the State that is derived from Solar Photovoltaic Energy Resources and that is used to track and verify compliance with the provisions of this Regulation.

"**Total Retail Sales**" means retail sales of electricity within the State of Delaware exclusive of sales to any Industrial Customer with a Peak Demand in excess of 1,500 kilowatts.

11 DE Reg. 1670 (06/01/08)

2.0 Purpose and Scope

2.1 The benefits of electricity from renewable energy resources accrue to the public at large, and electric suppliers and consumers share an obligation to develop a minimum level of these resources in the electric supply portfolio of the State. The purpose of this Regulation, in support of 26 **Del.C.**, §351 - 363, is to set forth the rules for governing the RPS.

2.2 This Regulation shall apply to all retail electricity sales in the State of Delaware except for retail electricity sales of Municipal Electric Companies and retail electricity sales to any Industrial Customer with a Peak Demand in excess of 1,500 kilowatts.

2.2.1 An Industrial Customer with Peak Demand in excess of 1,500 kilowatts may elect to have their load exempt from this Regulation provided that they meet the definitions found in Section 1.1 and:

2.2.1.1 submit a notice to the Commission's Staff including, but not limited to, Name and Address of Industrial Customer, and NAICS Code and load for each account;

2.2.1.1.1 the Commission's Staff shall, within thirty (30) days of receipt of the notice, provide to the Industrial Customer an acknowledgement of the status, exempt or non-exempt, of the Industrial Customer and;

2.2.1.2 submit the Commission's Staff acknowledgement referenced in Section 2.2.1.1.1 of this Regulation to their Retail Electricity Supplier.

2.2.2 For an End-Use Customer with multiple accounts totaling in excess of 1,500 kilowatts within an applicable utility's service territory and served by a single Retail Electricity Supplier, to have their load exempt, the aggregate of their accounts with an NAICS Manufacturing Sector Code must have a Peak Demand of at least 751 kilowatts and they must follow the procedure found in Section 2.2.1.

2.3 Any Rural Electric Cooperative that is opted-out of Commission regulation by its membership pursuant to 26 **Del.C.** §223 of the **Delaware Code** shall, for all purposes of administering and applying this Regulation, be treated as a Municipal Electric Company during any period of time the Rural Electric Cooperative is exempt from Commission regulation.

2.4 A Rural Electric Cooperative may elect to be exempt from the requirements of this Regulation provided that, on or before June 1, 2006, they:

2.4.1 submit a written notice to the Delaware General Assembly;

2.4.2 submit a written notice to the Commission;

2.4.3 alert their End-Use Customers with notices inserted in two (2) consecutive electricity bills;

2.4.4 offer their End-Use Customers a voluntary program for purchasing renewable energy under competitive rates; and

2.4.5 either contribute to the Delaware Green Energy Fund at levels commensurate with other Retail Electricity Suppliers or create an independent fund separate from the Delaware Green Energy Fund to be used in support of energy efficiency technologies, renewable energy technologies, or demand side management programs, into which they make payments of \$0.178 for each megawatt-hour they sell, transmit, or distribute in the State.

11 DE Reg. 1670 (06/01/08)

3.0 Administration of RPS**3.1 Certifying Eligible Energy Resources:**

- 3.1.1 The Commission through its Staff will certify Generation Units as Eligible Energy Resources based on the definition of Eligible Energy Resources found in Section 1.1 of this Regulation.
- 3.1.2 Any Generation Unit seeking certification as an Eligible Energy Resource must submit an Application for Certification as an Eligible Energy Resource Under the Delaware Renewable Energy Portfolio Standard (Application) to the Commission. This may include Customer-Sited Generation or a Generation Unit owned or operated by a Municipal Electric Company.
- 3.1.3 Commission Staff will review the Application and will notify the applicant of its approval as an Eligible Energy Resource or of any deficiencies in their Application within 30 days of receipt. The applicant will have the opportunity to revise their submission, if appropriate.
- 3.1.4 If Commission Staff finds the Generation Unit to be in compliance with Sections 1.0 and 3.0 of this Regulation, as well as any other applicable Delaware statute; Commission Staff will issue a State of Delaware Certification Number.
- 3.1.5 Upon receipt of the State of Delaware Certification Number, a Generation Unit will be deemed an Eligible Energy Resource.
- 3.1.6 Upon designation as an Eligible Energy Resource, the Generation Unit's owner shall be entitled to one (1) Renewable Energy Credit (REC) for each mega-watt hour of energy derived from Eligible Energy Resources other than Solar Photovoltaic Energy Resources. Upon designation as an Eligible Energy Resource, the owner of a Generation Unit employing Solar Photovoltaic Energy Resources shall be entitled to one (1) Solar Renewable Energy Credit (SREC) for each mega-watt hour of energy derived from Solar Photovoltaic Energy Resource. SRECs and RECs will be created and supplied by the PJM-EIS GATS, or its successor at law. Eligible Energy Resources are subject to applicable PJM-EIS GATS rules and shall pay applicable PJM-EIS GATS fees.
 - 3.1.6.1 However, if in the future, the Commission finds that PJM-EIS's GATS is not applicable or not suited to meet the needs or requirements of the RPS, the Commission may establish or participate in another renewable energy tracking system.
- 3.1.7 RECs or SRECs created by Eligible Energy Resources on or after June 1, 2006 shall be valid to meet retail electricity supplier requirements, subject to Section 3.2.3 of this Regulation.
 - 3.1.7.1 If a Generation Unit is deemed an Eligible Energy Resource under Section 3.1 and the Eligible Energy Resource's GATS account continues to be maintained in good standing, the Eligible Energy Resource may achieve a Delaware designation for RECs or SRECs recorded with PJM-EIS's GATS for the calendar year being traded in GATS at the time of the Commission Staff's approval of the Eligible Energy Resource, but no earlier than June 1, 2006.
- 3.1.8 An Eligible Energy Resource will remain certified unless substantive changes are made to its operational characteristics. Substantive changes include, but are not limited to changes in fuel type, fuel mix and generator type. An Eligible Energy Resource making substantive changes to its operational characteristics shall notify the Commission of such changes at least 30 days prior to the effective date of such changes. At such time, the Generation Unit shall submit a revised Application, which shall be subject to the process laid out in Section 3.1 of this Regulation.
- 3.1.9 RECs or SRECs created by an Eligible Energy Resource shall remain valid for compliance, subject to Section 3.2.3 and Section 3.3.3 of this Regulation, even if that Eligible Energy Resource is subsequently decertified for eligibility.

3.2 Compliance with RPS

- 3.2.1 The Total Retail Sales of each Retail Electricity Product sold to End-Use Customers by a Retail Electricity Supplier during any given Compliance Year shall include a minimum percentage of electrical energy sales from Eligible Energy Resources and Solar Photovoltaics as shown in Schedule 1. Any portion of a Retail Electric Supplier's renewable energy supply portfolio for 2007, 2008 and 2009 Compliance Years that is acquired under wholesale renewable energy supply entered into pursuant to the 2005 or 2006 Delaware Standard Offer Services ("SOS") auctions

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shall be subject to the provisions of this Regulation as shown in Schedule 2 below that were in effect on the date of the 2005 or 2006 SOS auction.

SCHEDULE 1		
Compliance Year (beginning June 1st)	Cumulative Minimum Percentage from Solar Photovoltaics Energy Resources	Minimum Cumulative Percentage from Eligible Energy Resources^a
2007	--	2.0%
2008	0.011%	3.0%
2009	0.014%	4.0%
2010	0.018%	5.5%
2011	0.048%	7.0%
2012	0.099%	8.5%
2013	0.201%	10.0%
2014	0.354%	11.5%
2015	0.559%	13.0%
2016	0.803%	14.5%
2017	1.112%	16.0%
2018	1.547%	18.0%
2019	2.005%	20.0%

a. Minimum Cumulative Percentage from Eligible Energy Resources includes the Minimum Cumulative Percentage from Solar Photovoltaics.

SCHEDULE 2		
Compliance Year (beginning June 1st)	Minimum Cumulative Percentage from Solar Photovoltaics Energy Resources	Minimum Cumulative Percentage from Eligible Energy Resources^a
2007	--	1.00%
2008	0.011%	1.50%
2009	0.014%	2.00%
2010	0.018%	5.00%
2011	0.048%	7.00%
2012	0.099%	8.50%
2013	0.201%	10.00%
2014	0.354%	11.50%
2015	0.559%	13.0%
2016	0.803%	14.5%
2017	1.112%	16.00%
2018	1.547%	18.00%
2019	2.005%	20.00%

a. Minimum Cumulative Percentage from Eligible Energy Resources includes the Minimum Cumulative Percentage from Solar Photovoltaics.

- 3.2.2 A Retail Electricity Supplier's compliance with Schedule 1 shall be based on accumulating RECs and SRECs equivalent to the current Compliance Year's Cumulative Minimum Percentage of Total Retail Sales of each Retail Electricity Product sold to End-Use Customers and subject to Section 3.2.3 and, where appropriate, Commission regulations.¹ Such RECs shall be filed annually with the Commission within 120 days following the completion of the Compliance Year.
- 3.2.3 Each Retail Electricity Supplier can provide no more than 1% of each Compliance Year's Total Retail Sales from Eligible Energy Resources operational before December 31, 1997. The remainder of each year's retail sales, up to the required amount as specified in Section 3.2.1 of this Regulation must come from New Renewable Generation resources. In Compliance Year 2020 and for each Compliance Year thereafter, all Eligible Energy Resources used to meet the cumulative minimum percentage requirements set by the Commission rules shall be New Renewable Generation Resources.
- 3.2.4 A Retail Electricity Supplier shall not use RECs used to satisfy another state's renewable energy portfolio requirements for compliance with Schedule 1. A Retail Electricity Supplier may sell or transfer any RECs or SRECs not required to meet this Regulation.
- 3.2.5 On or after June 1, 2006, Eligible Energy Resources may create and accumulate RECs or SRECs for the purposes of calculating compliance with the RPS.
- 3.2.6 Aggregate generation from small Eligible Energy Resources, 100 kilowatts of capacity or less, may be used to meet the requirements of Schedule 1 or Schedule 2, provided that the generators or their agents, on an annual basis, document the level of generation, as recorded by appropriate metering.
- 3.2.7 A Retail Electricity Supplier shall receive 300% credit toward meeting the Minimum Cumulative Percentage from Eligible Energy Resources of Schedule 1 or Schedule 2 of the RPS for energy derived from the following sources installed on or before December 31, 2014:
- 3.2.7.1 Customer-Sited solar photovoltaic physically located in Delaware; or
 - 3.2.7.2 A fuel cell powered by Renewable Fuels.
- 3.2.8 A Retail Electricity Supplier shall receive 150% credit toward meeting the RPS for wind energy installations sited in Delaware on or before December 31, 2012.
- 3.2.9 A Commission regulated electric company shall receive 350% credit toward meeting the Renewable Energy Portfolio Standards established for energy derived from off-shore wind energy installations sited off the Delaware coast on or before May 31, 2017.
- 3.2.9.1 To be entitled to 350% credit, contracts for energy and renewable energy credits from such off-shore wind energy installations must be executed by Commission regulated electric companies prior to commencement of construction of such installations.
 - 3.2.9.2 Commission regulated electric companies shall be entitled to such multiple credits for the life of contracts for renewable energy credits from off-shore wind installations executed pursuant to section 3.2.9.
- 3.2.910 A Retail Electricity Supplier shall receive credit toward meeting the RPS for electricity derived from the fraction of eligible landfill gas, biomass or biogas combined with other fuels.
- 3.2.101 Cumulative minimum percentage requirements of Eligible Energy Resources shall be established by Commission rules for Compliance Year 2020 and each subsequent year. In no case shall the minimum percentages established by Commission rules be lower than those required for Compliance Year 2019 in Schedule 1 or Schedule 2. Each of the rules setting such minimum percentage shall be adopted at least two years prior to the minimum percentage being required.

1. The Commission understands the legislation to mean that the Total Retail Sales of *each* Retail Electricity Product sold to End-Use Customers during a given Compliance Year shall include a minimum percentage of SRECs and RECs determined by the current Cumulative Minimum Percentage as defined in Schedule 1 or Schedule 2. The Commission shall, in another proceeding, further define how SRECs and RECs from Green Power products, as that term is defined in Commission Docket Number 49, are to be tracked and utilized for compliance in the RPS.

3.2.14~~2~~ Beginning in Compliance Year 2010, and in each Compliance Year thereafter, the Commission may review the status of Schedule 1 and Schedule 2 and report to the legislature on the status of the pace of the scheduled percentage increases toward the goal of 20%. If the Commission concludes at this time that the schedule either needs to be accelerated or decelerated, it may also make recommendations to the General Assembly for legislative changes to the RPS.

3.2.12~~3~~ Beginning in Compliance Year 2014, and in each Compliance Year thereafter, the Commission may, in the event of circumstances specified in this subsection and after conducting hearings, accelerate or slow the scheduled percentage increases towards meeting the goal of 20%. The Commission may only slow the increases if the Commission finds that at least 30% of RPS compliance has been met through the ACP or SACP for three (3) consecutive years, despite adequate planning by the Retail Electricity Suppliers. The Commission may only accelerate the scheduled percentage increases after finding that the average price for RECs and SRECs eligible for RPS compliance has, for two (2) consecutive years, been below a predetermined market-based price threshold to be established by the Commission. The Commission shall establish the predetermined market-based price threshold in consultation with the Delaware Energy Office. Rules that would alter the percentage targets shall be promulgated at least two years before the percentage change takes effect. In no event shall the Commission reduce the percentage target below any level reached to that point.

3.3 Verification of Compliance with the RPS

3.3.1 Within 120 days of the end of a compliance year, each Retail Electricity Supplier who has made sales to an End-use Customer in the State of Delaware must submit a completed Retail Electricity Supplier's Verification of Compliance with the Delaware Renewable Energy Portfolio Standard Report (Report) which includes, but is not limited to, evidence of the specified number of SRECs and RECs required for that Compliance Year according to Schedule 1 or Schedule 2 and the Total Retail Sales of each Retail Electricity Product.

3.3.2 SRECs or RECs must have been created by PJM-EIS's GATS, or its successor at law or pursuant to Section 3.1.6.1 of this Regulation.

3.3.3 SRECs or RECs, submitted for compliance with this Regulation, may be dated no earlier than three (3) years prior to the beginning of the current Compliance Year.

3.3.4 In lieu of standard means of compliance with the RPS, any Retail Electricity Supplier may pay into the Fund a SACP or ACP pursuant to the provisions of 26 **Del.C.** §358 or as determined by the State Energy Coordinator of the Delaware Energy Office consistent with 26 **Del.C.** §354 (a).

3.3.5 The Commission Staff shall notify any Retail Electricity Supplier of any compliance deficiencies within 165 days of the close of the current Compliance Year. If the Retail Electricity Supplier is found to be deficient by the Commission Staff, the Retail Electricity Supplier shall be required to pay the appropriate ACP or SACP, according to Section 3.3.4 of this Regulation. All such payments shall be due within 30 days of notification by the Commission Staff. Upon receipt of payment, the Retail Electricity Supplier shall be found to be in compliance for that given year.

3.3.6 All compliance payments, made by the Retail Electricity Supplier, shall be payable to the Delaware Green Energy Fund and sent to the Commission.

11 DE Reg. 1670 (06/01/08)

4.0 Recovery of Costs

4.1 A Retail Electricity Supplier may recover, through a non-bypassable surcharge on its supply portion of the bill, actual dollar for dollar costs incurred in complying with the State of Delaware's RPS, except that any compliance fee assessed pursuant to Section 3.3.4 and its subsections of these Rules and Regulation shall be recoverable only to the extent authorized by Section 4.2 of this Regulation.

4.2 A Retail Electricity Supplier may recover any ACP or SACP if the payment of an ACP or SACP is the least cost measure to ratepayers as compared to the purchase of RECs and SRECs to comply with the RPS; or if there are insufficient RECs and SRECs available for the Retail Electricity Supplier to comply with the RPS.

- 4.3 Any cost recovered under this section shall be disclosed to customers at least annually on inserts accompanying customer bills.
- 4.4 Special provisions for customers of Public Service Commission regulated electric companies. All costs arising out of contracts entered into by a Commission regulated electric company pursuant to 26 Del.C. §1007 (d) shall be distributed among the entire Delaware customer base of such companies through an adjustable non-bypassable charge which shall be established by the Commission. Such costs shall be recovered if incurred as a result of such contracts unless, after Commission review, any such costs are determined by the Commission to have been incurred in bad faith, are the product of waste or out of an abuse of discretion, or in violation of law.

11 DE Reg. 1670 (06/01/08)

5.0 Other General Rules

- 5.1 Under Delaware's Freedom of Information Act, 29 Del.C. ch. 100, all information filed with the Commission is considered of public record unless it contains "trade secrets and commercial or financial information obtained from a person which is of a privileged or confidential nature." 29 Del.C. §10002(d)(2). To qualify as a non-public record under this exemption, materials received by the Commission must be clearly and conspicuously marked on the title page and on every page containing the sensitive information as "proprietary" or "confidential" or words of similar effect. The Commission shall presumptively deem all information so designated to be exempt from public record status. However, upon receipt of a request for access to information designated proprietary or confidential, the Commission may review the appropriateness of such designation and may determine to release the information requested. Prior to such release, the Commission shall provide the entity that submitted the information with reasonable notice and an opportunity to show why the information should not be released.
- 5.2 Any End-Use Customer, Retail Electricity Supplier, Eligible Energy Resource, potential Eligible Energy Resource or other interested party to which this Regulation may apply may file a complaint with the Commission pursuant to the Rules of Practice and Procedure of the Delaware Public Service Commission.
- 5.3 The failure to comply with this Regulation may result in penalties, including monetary assessments, suspension or revocation of eligibility as an Eligible Energy Resource, or other sanction as determined by the Commission consistent with 26 Del.C., §205(a), §217, and §1019.

10 DE Reg. 151 (07/01/06)

11 DE Reg. 1670 (06/01/08)

DEPARTMENT OF STATE
DIVISION OF PROFESSIONAL REGULATION
Controlled Substance Committee

Statutory Authority: 16 Delaware Code, Section 4731 (16 Del.C. §4731)

PUBLIC NOTICE

Consistent with a recent statutory amendment which relocated the Office of Controlled Substances to the Division of Professional Regulation, Department of State, the Secretary of State, in accordance with 29 Del.C. Chapter 101 and 16 Del.C. §4731, proposes establishment of a Controlled Substance Committee and to amend previously issued controlled substance regulations.

A public hearing was held on March 11, 2008. James L. Collins, Director of the Division of Professional Regulation, conducted the hearing as the designee of the Secretary of State. As a result of the public comment and upon the recommendation of the Director, the Secretary has determined to make both substantive and non-substantive revisions to the proposed amendments originally published in the *Delaware Register of Regulations* on

February 1, 2008 at 11 **DE Reg.** 1024

A second public hearing is scheduled for October 20, 2008 at 10:00 a.m. in the second floor conference room A of the Cannon Building, 861 Silver Lake Boulevard, Dover. The Secretary will receive and consider input in writing from any person concerning the proposed regulations. Written comments should be submitted to the Secretary care of the Office of Controlled Substances, Division of Professional Regulation, Cannon Building, 861 Silver Lake Blvd. Suite 203, Dover, DE 19904. The final date to submit written comments shall be at the public hearing. Anyone wishing to obtain a copy of the proposed regulations or to make comments at the public hearing should contact Office of Controlled Substances at the above address or by calling (302) 744-4500.

The Secretary will consider promulgating the proposed regulations immediately following the public hearing.

Uniform Controlled Substances Act Regulations

(Adopted by the Secretary of Health and Social Services pursuant to 16 **Del.C.** §4731 effective February, 1973 amended July 8, 1974, May 27, October 30, 1975, September 27, 1976, February 1, 1983, July 1, 1985, January 28, 1987, March 5, 1992, and August 29, 1995.)

4-0 Adoption of Federal Regulations

To the extent consistent with 16 **Del.C.** Ch. 47, regulations promulgated by the Federal Government pursuant to the Federal Comprehensive Drug Abuse Prevention and Control Act of 1970, and in effect as of this date, are adopted as a part of these regulations. Readopted October 30, 1975.

1.0 Controlled Substance Advisory Committee

- 1.1 The Controlled Substance Advisory Committee (hereafter designated as "the Committee") has a primary objective to promote, preserve and protect the public health, safety and welfare by regulating and monitoring controlled substance use and abuse through a program of registration, inspection, investigation and education. The Committee regulates by registering prescribers, dispensers, manufactures, distributors, clinics, researchers and other controlled substance registrants (i.e. – dog handler). Among its functions, the Committee issues and renews licenses; and makes recommendations to the Secretary of State of new or amended controlled substance regulations and disciplinary actions of registrants who violate the law. (16 **Del.C.** § 4700 to the end)
- 1.2 The Committee shall consist of 9 members: one physician, one dentist, one podiatrist, one veterinarian, one nurse practitioner, two pharmacists, one physician assistant and one public member. The Secretary of State will be provided recommendations for appointments to the Committee from the associated licensing Boards. Members shall have engaged in the prescribing, dispensing or storing of controlled substances for at least 5 years except for the public member. The public member will be appointed by the Secretary of State or their designee.
- 1.3 Each Committee member shall serve a term of three years and may succeed themselves for one additional term. A Committee member whose appointment has expired remains eligible to participate in Committee proceedings unless replaced by their respective regulatory board.
- 1.4 The Committee shall hold regularly scheduled meetings at least four times a calendar year and at other times the Committee considers necessary at the request of a majority of the members. A president and vice-president shall be elected by the members annually.
- 1.5 The conduct of all hearings and issuance of orders shall be in accordance with the procedures established pursuant to this section, Chapter 101 of Title 29, section 8735 of Title 29, and sections 4731 through 4736 of Title 16.
- 1.6 The Drug Control Administrator for the Division of Professional Regulation, who is an ex officio member of the Committee without a vote, is responsible for the performance of the regular administrative functions of the Committee and other duties as the Committee may direct.
- 1.7 A majority of members shall constitute a quorum, and no action shall be taken without the affirmative vote of at least 5 members. Any member who fails to attend 3 consecutive meetings, or who fails to attend at least half of all regular business meetings during any calendar year, shall automatically upon

such occurrence be deemed to have resigned from office and a replacement shall be appointed by the Secretary of State.

- 1.8 Minutes of all meetings shall be maintained by the Division of Professional Regulation. A record from which a verbatim transcript can be prepared shall be made of all hearings where evidence is presented. The expense of preparing any transcript shall be borne by the person requesting it.

2.0 Requirements

- 2.1 Registration shall be on a biennial basis upon forms supplied by the Division of Professional Regulation and/or Secretary of State for that purpose. A separate registration is required at each principal place of business or professional practice where controlled substances are manufactured, distributed, dispensed, or kept for research substances are manufactured, distributed, dispensed, or kept for research or analysis. Out-of-State registrants who dispense or distribute controlled substances to patients or facilities in Delaware are required to obtain a registration.
- 2.2 Revocation and Suspension
- 2.2.1 Revocation of registration by the Federal Government will result in automatic revocation of the State registration.
- 2.2.2 Proceedings for denying, suspending or revoking a registration shall be held before the Committee. The Committee will forward their recommendation in writing to the Secretary of State for his/her review and decision. Persons complained against may appear personally or by counsel, and may produce any competent evidence in their behalf in answer to the alleged violation. ~~Such proceedings shall be tape recorded.~~
- 2.2.3 Whenever a registration is denied, suspended, or revoked by the Secretary of State, the Secretary of State or his/her designee will reduce in writing his/her findings and rulings, and the reasons therefore, and forward them to the persons complained against within 15 days of receiving the written recommendation of the Committee. This provision shall in no way stay any such denial, suspension, or revocation. The Secretary of State's decision is final and conclusive. A person aggrieved may file an appeal as provided in 16 **Del.C.** §4786.

3.0 Records and Inventory

- 3.1 Requirements
- 3.1.1 Practitioners authorized to prescribe or dispense controlled substances shall maintain a record with the following information:
- 3.1.1.1 Name and address of patient
- 3.1.1.2 Date prescribed
- 3.1.1.3 Name, strength, refills authorized and amount of medication.
- 3.1.2 Other records required by 21 **CFR** 1300 to end of 1316. The information for prescribed controlled substances may be kept either in a log or on patient records provided such records or logs are made available for inspection. The information for dispensed controlled substances must be maintained in a separate log. ~~at least 8 by 11 inches in dimension.~~ Entries must include the date dispensed, name and address of the patient, name and strength of medication, and amount dispensed.
- 3.1.3 Other persons registered to manufacture, distribute, or dispense controlled substances shall maintain a record with the following information:
- 3.1.3.1 Amount received or distributed.
- 3.1.3.2 Names, addresses and dates regarding these transactions.
- 3.1.3.3 Other records required by 21 **CFR** 1300 to the end of 1316.
- 3.2 Accountability Audits
- 3.2.1 ~~Pharmacies~~ Accountability audits in pharmacies will be accomplished through a review of invoices, prescription files, other records required by 21 **CFR** 1300 to the end of 1316.

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3.2.2 ~~Medical, dental and veterinary~~ Accountability audits of ~~medical, dental and veterinary~~ registered practitioners will be accomplished through a review of records to be kept by paragraph ~~3.2.4~~ 3.1 of this section.

3.2.3 ~~Manufacturers and distributors~~ Accountability audits of registered manufacturers and distributors (including wholesalers) will be accomplished through a review of invoices received and distributed and other records required by 21 CFR 1300 to the end of 1316.

3.3 Final inventory

3.3.1 Pharmacies. Whenever the pharmacist in charge of a pharmacy in the State of Delaware leaves his position, a complete inventory of all medication covered by 16 **Del.C.**, Ch. 47 will be taken by the present and prospective pharmacist-in-charge. A copy of such inventory will be sent to the Office of Controlled Substances ~~Narcotics and Dangerous Drugs~~ and another copy retained on the premises.

For the purpose of this regulation, the "pharmacist-in-charge" is a pharmacist registered with the State Board of Pharmacy and who is responsible for the prescription department of the registrant.

3.3.2 ~~Medical, dental and veterinary~~. ~~Medical, dental and veterinary~~ **Registered** practitioners who cease legal existence or discontinue business or professional practice shall notify the Office of ~~Narcotics and Dangerous Drugs~~ Controlled Substances promptly of such fact, and shall provide the Office with an inventory of controlled substances on hand.

3.4 Retention of Records

3.4.1 All records required by this Regulation must be retained for a period of at least two (2) years.

4.0 Prescriptions

4.1 Definitions. As used in this section:

4.1.1 The term "**Act**" means the Controlled Substance Act, 16 **Del.C.**, Ch. 47.

4.1.2 The term "~~individual~~ practitioner" means physician, dentist, veterinarian, podiatrist, nurse practitioner, physician assistant or other individual, licensed, registered, or otherwise permitted, by the United States or the State of Delaware to prescribe, dispense or store a controlled substance in the course of professional practice but does not include a pharmacist, a pharmacy, or an institutional practitioner.

4.1.3 The term "pharmacist" means any pharmacist licensed by the State of Delaware to dispense controlled substances and shall include any other person (e.g. pharmacist intern) authorized by the State of Delaware to dispense controlled substances under the supervision of a pharmacist licensed by this State.

4.1.4 The term "prescription" means an order for medication which is dispensed to or for an ultimate user but does not include an order for medication which is dispensed for immediate administration to the ultimate user. (e.g., an order to dispense a drug to a bed patient for immediate administration in a hospital is not a prescription.)

4.1.5 The terms "register" and "registered" refer to registration required by 16 **Del.C.** §4732.

4.2 Persons Entitled to Issue Prescriptions

4.2.1 A Prescription for a controlled substance may be issued only by an ~~individual~~ practitioner who is:

4.2.1.1 Authorized to prescribe controlled substances by the jurisdiction in which he is licensed to practice his profession; and

4.2.1.2 Either registered or exempt from registration pursuant to 16 **Del.C.** §4732.

4.2.2 A verbal prescription for a controlled substance may only be communicated to a pharmacist or pharmacy intern by the prescriber. Prescriptions for controlled substances communicated by an employee or agent of the prescriber are not valid.

4.2.3 Written prescriptions for controlled substances may be transmitted via facsimile by a practitioner or by the practitioner's authorized agent to a pharmacy only when the transmission complies with 21 **CFR** 1306.11, 1306.21 and 1306.31.

4.3 Purposes of Issue of Prescription

- 4.3.1 A prescription for a controlled substance to be effective must be issued for a legitimate medical purpose by an ~~individual~~ practitioner acting in the usual course of ~~his~~ their professional practice. The responsibility for proper prescribing and dispensing of controlled substances is upon the prescribing practitioner, but a corresponding responsibility rests with the pharmacist who fills the prescription. An order purporting to be a prescription not issued in the usual course of professional treatment or in legitimate and authorized research is not a prescription within the meaning and intent of §4738 of the Act and the person knowingly filling such a purported prescription, as well as the person issuing it shall be subject to the penalties provided for violation of the provisions of law relating to controlled substances.
- 4.3.2 A prescription may not be issued in order for an ~~individual~~ practitioner to obtain controlled substances for supplying the ~~individual~~ practitioner for the purpose of general dispensing to patients.
- 4.3.3 A prescription may not be issued for the dispensing of narcotic drugs listed in any schedule to a narcotic drug dependent person for the purpose of continuing his dependence upon such drugs, unless otherwise authorized by law.
- 4.4 Manner of Issuance of Prescriptions. All prescriptions for controlled substances shall be dated and signed on the day when issued and shall bear the full name and address of the patient, and the name, address, telephone number and registration number of the practitioner. A practitioner may sign a prescription in the same manner as he would sign a check or legal document (e.g. J.H. Smith or John H. Smith). When an oral order is not permitted, prescriptions shall be written with ink or indelible pencil or typewriter and shall be manually signed by the practitioner. The prescriptions may be prepared by a secretary or agent for the signature of a practitioner but the prescribing practitioner is responsible where the prescription does not conform in all essential respects to the law and regulations. A corresponding liability rests upon the pharmacist who fills a prescription not prepared in the form prescribed by these regulations. Each written prescription shall have the name of the practitioner stamped, typed, or hand-printed on it, as well as the signature of the practitioner.
- 4.5 Persons Entitled to fill Prescriptions. A prescription for controlled substances may only be filled by a pharmacist acting in the usual course of his professional practice and either registered individually or employed in a registered pharmacy or by a registered institutional practitioner.
- 4.6 Dispensing Narcotic Drugs for Maintenance Purposes. No person shall administer or dispense narcotic drugs listed in any schedule to a narcotic drug dependent person for the purpose of continuing his dependence except in compliance with and as authorized by Federal law and regulation.
- 4.7 Emergency Dispensing of Schedule II Substances. In an emergency situation a pharmacist may dispense controlled substances listed in Schedule II upon receiving oral authorization of a prescribing ~~individual~~ practitioner, provided that the procedures comply with Federal law and regulation.
- 4.8 Expiration of Prescription.
- 4.8.1 Prescriptions for controlled substances in Schedules II and III will become void unless dispensed within seven (7) days of the original date of the prescription or ~~if~~ unless the original prescriber authorizes the prescription past the seven (7) day period. Such prescriptions cannot be written nor dispensed for more than 100 dosage units or a 31 day supply whatever is the greater at one time. As an exception to dosage limitations set forth in this subparagraph, and in accordance with 21 **CFR** Section 1306.1(b), prescriptions for controlled substances in Schedule II for patients either having a medically documented terminal illness or patients in Long Term Care Facilities (LTCF), may be filled in partial quantities, to include individual dosage units. For each partial filling, the dispensing pharmacist shall record on the back of the prescription (or another appropriate record, uniformly maintained, and readily retrievable) the date of the partial filling, quantity dispensed, remaining quantity authorized to be dispensed and the identification of the dispensing pharmacist. The total quantity of Schedule II controlled substances dispensed in all partial fillings must not exceed the total quantity prescribed.
- 4.8.2 Schedule II prescriptions for terminally ill or LTCF patients, shall be valid for a period not to exceed 60 days from the issue date unless sooner terminated by the discontinuance of the medication.

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- 4.9 Mail Order Prescription. Before dispensing prescriptions for Schedules II, III, IV, V controlled substances by mail, the registrant and/or the pharmacist-in-charge must assure that the prescription is valid and written by a prescriber properly registered with the Federal Government. Such verification may be made either in writing or orally.
- 4.10 Pursuant to authority granted by 16 **Del.C.** §4732 the Secretary of State finds that waiver of the registration requirements contained in that section as to non-resident ~~physicians or dentists practitioners~~ is consistent with the public health and safety subject to the conditions contained in this regulation. Pharmacists may dispense controlled substances pursuant to a prescription written by a non-resident ~~physician or dentist practitioner~~ (who is not registered under 16 **Del.C.** Ch. 47) provided that:
- 4.10.1 The pharmacist must establish that the non-resident ~~physician or dentist practitioner~~ is properly registered to prescribe controlled substances under Federal Law. The pharmacist may keep a record which contains the name and address of the non-resident ~~physician or dentist practitioner~~, his Federal registration number, and the name and address of the source of the registration data.
- 4.10.2 ~~The pharmacist must verify the identification of the bearer of the prescription by reference to a driver's license or some other identification which contains the bearer's photograph, and must keep a record of such person. The pharmacist and/or an employee under his/her direct supervision must verify the identification of the bearer and receiver of the controlled substance prescription by reference to valid photographic identification and record the unique number associated with the valid photographic identification as part of the prescription record. For the purposes of this section, a valid photographic identification is limited to the following:~~
- 4.10.2.1 A valid Delaware motor vehicle operator's license which contains a photograph of the person presenting the prescription - record the license number listed on the license as part of the prescription record.
- 4.10.2.2 A valid Delaware identification card which contains the photograph of the person presenting the prescription - record the identification number listed on the card as part of the prescription record.
- 4.10.2.3 A valid United States passport.
- 4.10.2.4 A valid passport or motor vehicle operator's license or state identification card of another state, territory or possession of the United States or a foreign country only if it:
- 4.10.2.4.1 Contains a photograph of the person presenting the prescription:
- 4.10.2.4.2 Is encased in tamper-resistant plastic or is otherwise tamper-resistant.
- 4.10.2.4.3 Identifies the date of birth of the person presenting the prescription and has an identification number assigned to the document which can be recorded as part of the prescription record.
- 4.10.3 The pharmacist must establish that the name of the non-resident ~~physician or dentist practitioner~~ does not appear on the list kept by the Office of ~~Narcotics and Dangerous Drugs of the Division of Public Health~~ Controlled Substances of those non-resident ~~physicians and dentists practitioners~~
- 4.10.3.1 The waiver of the registration requirement provided by the registration shall not apply to non-resident ~~physicians and dentists practitioners~~ determined by the ~~Narcotics and Dangerous Drugs of the Division of Public Health~~ Office of Controlled Substances to have acted in a manner inconsistent with the Public Health and Safety. ~~and Safety, and the Office of Narcotics and Dangerous Drugs~~ The Office of Controlled Substances shall maintain a list of those non-resident ~~physicians and dentists practitioners~~ found by them to have so acted. Pharmacists shall not honor the prescriptions of non-resident ~~physicians and dentists practitioners~~ whose names appear on that list unless such non-resident ~~physicians and dentists practitioners~~ have registered pursuant to the provisions of 16 **Del.C.** §4732.
- 4.11 Except when dispensed directly by a practitioner other than a pharmacy to an ultimate user, no Schedule V cough preparation containing codeine, dilaudid or any other narcotic cough preparation

may be dispensed without the written or oral prescription of a practitioner. ~~effective date January 1, 1974.~~

- 4.12 ~~The pharmacist or an employee under his/her supervision must verify the identity of the person receiving a dispensed controlled substance at the time it is transferred to that person. A driver's license or a similar document containing a photograph and the name and address of the person is an acceptable document. The name and address of the person should be recorded on either the prescription or patient's profile. The pharmacist or employee is not required to follow this procedure for each transaction if the identify of the person is clearly established by visual recognition. In those cases, the information shall be recorded at least once. The pharmacist and/or an employee under his/her supervision must also verify the identity of the person receiving a dispensed controlled substance at the time it is transferred to that person. The manner in which valid photographic identification is verified and recorded shall be the same as provided in 4.10.2.~~

5.0 Security and Disposal

5.1 Security

5.1.1 Schedule II Substances Storage

- 5.1.1.1 Pharmacies and ~~medical, dental and veterinary~~ practitioners must store Schedule II controlled substances in a burglar resistant type safe ~~or GSA Class 5 grade steel cabinet or their equivalent~~. If the safe weighs less than 750 pounds, it must be bolted, cemented, or secured to the wall or floor in such a way that it cannot be readily removed. Other types of substantially construed, securely locked cabinets or drawers are acceptable provided that the room, storage area or areas shall be provided with electronic intrusion detection equipment to all sections of the said area or areas where Schedule II controlled substances are stored, so as to detect four-step movement (as defined in Section 12.8 of U.L. Standards 681).
- 5.1.1.1.1 The aforementioned electronic intrusion detection equipment shall be installed using equipment that must be U.L. approved and listed. The said system must be capable of transmitting a local alarm to an outside audible device that shall comply with U.L. Standard 4.64.
- 5.1.1.1.2 A local alarm connection shall not be permitted if the controlled substance premise is located more than 400 feet from a public roadway. If said controlled substances premise is more than 400 feet from public roadway or found to be within a location where such an alarm would not be effective, then the alarm system on said controlled substances premises shall transmit an alarm signal to a certified station or directly into a law enforcement agency that has 24-hour monitoring capabilities.
- 5.1.1.1.3 The Secretary of State may require additional security requirements if ~~either he/she~~ deems it necessary as a result of ~~excessive~~ diversion of controlled substances.
- 5.1.1.1.4 Definitions: Four-step movement - 12.8 - The system shall respond to the movement of a Four-step person walking not more than four consecutive steps at a rate of one step per second. Such Four-step movement shall constitute a "trial", and a sufficient number of detection units shall be installed so that, upon test, an alarm will be initiated in at least three out of every four consecutive "trials" made moving progressively through the protective area.
- 5.1.1.2 Safes, ~~cabinets or drawers~~ containing Schedule II controlled substances must be kept locked at all times. They may be opened only by the practitioner or by the pharmacist-in charge or other designees, who must be licensed medical professionals.
- 5.1.1.3 Practitioners who store no more than 400 total dosage units of Schedule II substances are not required to comply with the safe or alarm requirements of the Regulation. However, their Schedule II controlled substances must be stored in securely locked, substantially constructed cabinets.
- 5.1.1.4 Controlled substances listed in Schedules III, IV and V shall be stored in a securely locked, substantially constructed cabinet. Pharmacies may disperse such substances in

PROPOSED REGULATIONS

Schedule III, IV and V throughout the stock of non-controlled substances in such a manner as to obstruct the theft or diversion of the controlled substances. The immediate area in a pharmacy containing dispersed, controlled drugs must be secured in a manner approved by the Office of ~~Narcotics and Dangerous Drugs~~ Controlled Substances which will prevent entry by unauthorized persons. The keys to such area shall at all times be carried by a pharmacist. The doors shall be locked whenever the area is not directly under the supervision of a pharmacist or a responsible person designated by the pharmacist.

5.1.2 Pharmacies.

5.1.2.1 Schedule II controlled substances kept in areas other than prescription areas in pharmacies must be placed in safes, ~~cabinets or drawers~~ of the type described above. These must be kept locked at all times and may be opened only by the pharmacist-in-charge or his designee, who must also be a registered pharmacist.

5.1.2.2 Schedule III through V controlled substances kept in areas other than prescription areas in pharmacies must be kept in adequately locked enclosures. They may be opened only by the pharmacist-in-charge, or his designees, who must be licensed pharmacists.

5.1.3 Report of Loss or Theft. Registrants shall notify the Office of ~~Narcotics and Dangerous Drugs of the Division of Public Health~~ Controlled Substances, of any theft or significant loss of any controlled substances, or of any prescription blanks, upon the discovery of such loss or theft. In addition, registrants shall complete the Federal forms regarding such loss or theft, one copy of which must be filed with the Office of ~~Narcotics and Dangerous Drugs~~ Controlled Substances.

5.1.4 Hypodermic syringes and needles must be secured in an area only accessible to personnel authorized under 16 **Del.C.** Ch. 47 to dispense such items.

5.2 Disposal

5.2.1 Controlled Substances. Any registrant in possession of any controlled substances and desiring or required to dispose of such substance or substances shall contact the Office of ~~Narcotics and Dangerous Drugs of the Division of Public Health~~ Controlled Substances for proper instructions regarding disposal.

5.2.2 Hypodermic Syringe or Needle. Hypodermic syringes or needles shall be destroyed before disposal in such a manner as will render it impossible to adapt them for the use of narcotic drugs by subcutaneous injections.

6.0 Procedures for Adoption of Regulations

6.1 Notice. Prior to the adoption, amendment or repeal of any of these controlled substances regulations, the Secretary of State/Committee will give at least twenty (20) days notice of the intended action.

The notice will include a statement of either the terms of substance of the intended action or a description of the subjects and issues involved, or the time when, the place where present their views thereon. The notice will be mailed to persons who have made timely request of the Office of ~~Narcotics and Dangerous Drugs~~ Controlled Substances for advance notice of such rule-making proceedings and shall be published in two newspapers of general circulation in this State.

6.2 Hearing. ~~He may appoint subordinates~~ The Secretary of State shall designate the Committee to preside over such hearings. The ~~Secretary~~ Committee will afford all interested persons a reasonable opportunity to submit data, views or arguments, orally or in writing.

6.3 Emergency Regulations. If the Secretary of State, upon the recommendation of the Committee, finds that an imminent peril to the public health, safety or welfare requires adoption of a regulation upon fewer than twenty (20) days notice and states in writing his/her reasons for that finding, ~~he~~ the Secretary of State may proceed without prior notice or hearing or upon any abbreviated notice and hearing ~~he/she~~ finds practicable, to adopt an emergency regulation. Such rules will be effective for a period not longer than 120 days, but the adoption of an identical rule under the procedures discussed above is not precluded.

6.4 Finding and Availability. The Secretary of State will maintain on file any adoption, amendment or repeal of these regulations. ~~with the Secretary of State. Regulations will become effective upon such filing.~~ In addition, copies of these regulations will be available for public inspection at the Office of ~~Narcotics~~

~~and Dangerous Drugs of the Division of Public Health Jesse S. Cooper Building, Dover, Delaware, 19901. Controlled Substances.~~

7.0 Severability

- 7.1 If any provision of these regulations is held invalid the invalidity does not effect other provisions of the regulations which can be given effect without the invalid provisions or application, and to this end the provisions of the regulation are severable.
- 7.2 Pursuant to 16 **Del.C.** §4718(f) and 16 **Del.C.** §4720(c) the Secretary of State finds that the compounds, mixtures or preparations listed in 21 **CFR** 1301.21, 21 **CFR** 1308.24 contain one or more active medical ingredients not having a stimulant or depressant effect on the central nervous system and that the admixtures included therein are in combinations, quantities, proportions, or concentrations that vitiate the potential for abuse of the substances which have a stimulant or depressant effect on the central nervous system, and therefore:
- 7.2.1 The Secretary of State, as authorized by 16 **Del.C.** §4718(f) and 16 **Del.C.** §4720(c), does hereby except by rule the substances listed in 21 **CFR** 130.21, **CFR** 1308.24 and 21 **CFR** 1308.32 from Schedules III and IV of the Uniform Controlled Substances Act, 16 **Del.C.** Ch. 47.
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Symbol Key

Arial type indicates the text existing prior to the regulation being promulgated. Underlined text indicates new text added at the time of the proposed action. Language which is ~~stricken through~~ indicates text being deleted. **[Bracketed Bold language]** indicates text added at the time the final order was issued. ~~**[Bracketed-stricken through]**~~ indicates language deleted at the time the final order was issued.

Final Regulations

The opportunity for public comment shall be held open for a minimum of 30 days after the proposal is published in the *Register of Regulations*. At the conclusion of all hearings and after receipt within the time allowed of all written materials, upon all the testimonial and written evidence and information submitted, together with summaries of the evidence and information by subordinates, the agency shall determine whether a regulation should be adopted, amended or repealed and shall issue its conclusion in an order which shall include: (1) A brief summary of the evidence and information submitted; (2) A brief summary of its findings of fact with respect to the evidence and information, except where a rule of procedure is being adopted or amended; (3) A decision to adopt, amend or repeal a regulation or to take no action and the decision shall be supported by its findings on the evidence and information received; (4) The exact text and citation of such regulation adopted, amended or repealed; (5) The effective date of the order; (6) Any other findings or conclusions required by the law under which the agency has authority to act; and (7) The signature of at least a quorum of the agency members.

The effective date of an order which adopts, amends or repeals a regulation shall be not less than 10 days from the date the order adopting, amending or repealing a regulation has been published in its final form in the *Register of Regulations*, unless such adoption, amendment or repeal qualifies as an emergency under §10119.

DELAWARE RIVER BASIN COMMISSION**ORDER****Water Quality Regulations, Water Code and Comprehensive Plan to Classify the Lower Delaware River as Special Protection Waters**

The Delaware River Basin Commission ("Commission" or "DRBC") is a federal-state regional agency charged with managing the water resources of the Delaware River Basin without regard to political boundaries. Its members are the governors of the four Basin states – Delaware, New Jersey, New York and Pennsylvania – and the North Atlantic Division Commander of the U.S. Army Corps of Engineers, representing the federal government. The DRBC is not subject to the requirements of the Delaware Administrative Procedures Act. The purpose of this notice is to advise the public that duly adopted regulations of the Commission have been filed with the State of Delaware in accordance with Section 14.2 of the Delaware River Basin Compact.

I. Summary

By Resolution No. 2008-9 on July 16, 2008, the Commission approved amendments to its Water Quality Regulations, Water Code and Comprehensive Plan to establish numeric values for existing water quality for the reach of the main stem Delaware River known as the "Lower Delaware" and to assign the Special Protection Waters (SPW) classification "Significant Resource Waters" (SRW) on a permanent basis to this reach. The Commission also approved language to clarify aspects of the SPW regulations, especially with respect to existing facilities, that have confused some DRBC docket holders and applicants since the SPW program was originally adopted by the Commission in 1992 for point sources and in 1994 for non-point sources.

Notice of the proposed regulation was published in the Delaware Register of Regulations on October 1, 2007 (11 DE Reg. 376-378 (10/01/07)) as well as in the Federal Register (72 FR 57255) on October 9, 2007, the New Jersey Register (39 N.J.R. 4392) on October 15, 2007, the New York State Register (page 8) on October 10, 2007 and the Pennsylvania Bulletin (37 Pa. B. 5527) on October 13, 2007, respectively. The Commission held informational meetings about the proposed changes on October 25, 2007 in Stockton, New Jersey and on

November 1, 2007 in Easton, Pennsylvania. A public hearing was held on December 4, 2007, and written comments were received through December 6, 2007.

By Resolution No. 2005-2 in January of 2005, the Commission classified the Lower Delaware as SRW on a temporary basis, pending the determination of numeric values for existing water quality for this section of the river and a thorough evaluation of the data to determine whether or not to classify certain sections of the Lower Delaware as Outstanding Basin Waters and whether to make the temporary Special Protection Waters designation permanent for some or all of the Lower Delaware. Following duly noticed public hearings in September 2005, September 2006, September 2007 and May 2008, temporary designation was extended repeatedly pending the Commission's final action on July 16, 2008.

II. Findings and Decision

The Commission's findings are summarized in DRBC Resolution No. 2008-9, dated July 16, 2008, approving the final form of the proposed amendments to the Commission's Water Code, Water Quality Regulations and Comprehensive Plan. Resolution No. 2008-9 is re-printed below. However in place of the attachment to the resolution, which consists of a redline text of the amended rule, the rule in its final form is provided, incorporating all amendments with the exception of a lengthy technical table (Table 2). Table 2 identifies the water quality control points for the Lower Delaware and numeric values for existing water quality at each control point.

The attachment to Resolution No. 2008-9, showing the rule amendments as proposed in October of 2007 and as finally approved by the Commission on July 16, 2008, and including Table 2, is available on the DRBC website, DRBC.net. A comment and response document addressing oral comments offered at the public hearing and written comments received through the close of the comment period is also available on the Commission's website. Hard copies of these documents may be obtained by request of the Commission's Information Resources Coordinator, Kim Wobick, who can be reached at 609-883-9500, ext. 263 or at kim.wobick@drbc.state.nj.us. A charge for printing and mailing may apply.

III. Text and Citation

The text of Section § 3.10.3 A.2. Special Protection Waters of the Commission's Administrative Manual Part III - Water Quality Regulations and the same section of the Delaware River Basin Water Code shall be in the form set forth in Resolution No. 2008-9. The Commission's Water Quality Regulations are incorporated by reference in the Code of Federal Regulations at 18 CFR Part 410.

IV. Effective Date

The Commissioners unanimously approved the subject amendments at a public meeting on July 16, 2008. The amendments are effective upon filing with the signatory parties in accordance with Section 14.2 of the Delaware River Basin Compact, 53 Delaware Laws, Chapter 71.

Pamela M. Bush
Commission Secretary and Asst. General Counsel

NO. 2008 – 9

A RESOLUTION to amend the *Water Quality Regulations*, *Water Code* and *Comprehensive Plan* by permanently designating the Lower Delaware River as Special Protection Waters with the classification Significant Resource Waters.

WHEREAS, by Resolution No. 70-3, codified in the Commission's *Water Quality Regulations* at Section 3.10.3 A., the Commission established an antidegradation policy for interstate waters within its jurisdiction, and by Resolutions No. 92-21 and 94-2, it instituted a set of regulations known as the "Special Protection Waters" program to implement this policy in certain portions of the Basin. The program is intended to maintain or improve the quality of interstate waters where existing water quality is better than the established stream quality objectives; and

WHEREAS, in accordance with Section 3.10.3 A.2 of the Commission's *Administrative Manual–Part III*,

Water Quality Regulations ("Regulations"), the Delaware Riverkeeper Network submitted to the Commission in April 2001 a nomination petition requesting that the Commission classify the Lower Delaware River – the reach of the main stem Delaware River extending from River Mile 209.5 (the downstream boundary of the Delaware Water Gap National Recreation Area) to River Mile 133.4 (the Head of Tide) – as Special Protection Waters; and

WHEREAS, to be protected as Special Protection Waters, waters must be classified as either "Outstanding Basin Waters" or "Significant Resource Waters," as defined in Section 3.10.3 A.2.a. of the Regulations; and

WHEREAS, "Outstanding Basin Waters" are defined as interstate and contiguous intrastate waters that are contained within the established boundaries of national parks; national wild, scenic and recreational rivers systems; and/or national wildlife refuges that the Commission has classified under Section 3.10.3 A.2.g.1 of the Regulations as having exceptionally high scenic, recreational and ecological values that require special protection; and

WHEREAS, "Significant Resource Waters" are defined as interstate waters that the Commission has classified under Section 3.10.3 A.2.g.2 of the Regulations as having exceptionally high scenic, recreational, ecological, and/or water supply uses that require special protection; and

WHEREAS, as set forth more fully in Resolution No. 2005-2, data and findings documenting the high quality of scenic, recreational, ecological and water supply attributes of the Lower Delaware River are contained in two studies (DRBC, 2004 and National Park Service, 1999, respectively), a management plan for the Lower Delaware that received a formal expression of Commission support in Resolution No. 98-2 (1997) (this plan was recently re-affirmed in the *Lower Delaware River Management Committee Action Plan 2007-2011*); a federal designation of the Lower Delaware as part of the national Wild & Scenic Rivers System (P.L. 106-418, 106th Congress), and the *Water Resources Plan for the Delaware River Basin* (DRBC, 2004); and

WHEREAS, after a duly noticed public comment period and a public hearing on the matter, by Resolution No. 2005-2 on January 19, 2005 the Commission found on the basis of the foregoing studies, findings, plans, and federal designation that "the section of the Delaware River from River Mile 133.4 to River Mile 209.5, known as the "Lower Delaware River", is characterized by exceptionally high scenic, recreational, ecological and/or water supply values/uses within the meaning of Section 3.10.3 A. of the *Water Quality Regulations* and requires special protection in accordance with that section" (Res. No. 2005-2, par. 1); and

WHEREAS, by Resolution No. 2005-2 the Commission temporarily classified the Lower Delaware River (also "Lower Delaware") as Significant Resource Waters, pending the determination of numeric values for existing water quality for this section of the river and a thorough evaluation of these data to determine whether or not to classify certain sections of the Lower Delaware as Outstanding Basin Waters and whether to make the temporary Special Protection Waters designation permanent for some or all of the Lower Delaware; and

WHEREAS, in the course of designating the Lower Delaware as Special Protection Waters the Commission determined that it would clarify certain provisions of the SPW rule to ensure the rule's uniform application in all parts of the basin in which the rule is applied; and

WHEREAS, to allow the Commissioners and staff time to evaluate implementation options and develop language to clarify aspects of the rule, the Commission extended temporary designation of the Lower Delaware by resolutions No. 2005-15 (extension through September 30, 2006), No. 2006-22 (extension through September 30, 2007) and No. 2007-13 (extension through May 15, 2008), before they caused to be published in October of 2007 in the *Federal Register* and in the Delaware, New Jersey, New York and Pennsylvania registers a new Notice of Proposed Rulemaking to Amend the *Water Quality Regulations*, *Water Code* and *Comprehensive Plan* to classify the Lower Delaware River as Special Protection Waters; and

WHEREAS, the Commission has determined values for existing water quality for the Lower Delaware, enabling the Commission for the first time to require applicants for new wastewater treatment facilities or for substantial alterations or additions to existing facilities to demonstrate that their new or increased discharges will cause no measurable change to existing water quality except toward natural conditions at a set of established water quality control points; and

WHEREAS, the Commission established a public comment period on the proposed amendments to run through December 6, 2007; it held informational meetings in Stockton, New Jersey on October 25, 2007 and in Easton, Pennsylvania on November 1, 2007; it made presentations on the proposed rule at a series of professional conferences as well as at meetings hosted by citizens' groups and elected officials within the affected regions; and it held a public hearing on the proposal on December 4, 2007; and;

WHEREAS, between September of 2004, when the Commission issued its first public notice of proposed rulemaking to classify the Lower Delaware River as Special Protection Waters, and December 6, 2007, when the

comment period closed on the amendments noticed formally in October of 2007, the Commission received thousands of comments from residents, elected officials, treatment plant operators, and administrative agencies, of which the majority constituted petitions and letters in support of the action, and of which approximately three dozen expressed objections to it; and

WHEREAS, during the months of February through July of 2008 Commissioners and Commission staff participated in additional meetings and conference calls at the request of interested parties in order to listen first-hand to the concerns that some constituents raised in written comments submitted during the comment period; and

WHEREAS, the Commissioners and staff have painstakingly sorted, categorized reviewed and prepared written responses to these comments, and in a number of instances have revised the proposed amendments to address concerns raised by commenters and to improve the rule's clarity, especially as applied to existing facilities; and

WHEREAS, extending the full Special Protection Waters program to the Lower Delaware River on a permanent basis will afford these interstate waters the same uniform high standard of protection that has preserved water quality in the Upper and Middle Delaware for approximately 15 years – a standard of protection that could not be achieved by the Commission's member states acting independently of one another; and

WHEREAS, the Commission will reevaluate the Best Demonstrable Technology (BDT) requirements of the rule in light of wastewater technologies developed since the BDT requirements were initially promulgated in 1992, and will consider among other things the effects of employing wastewater technologies on other media, greenhouse gas emissions and energy demands; now therefore,

BE IT RESOLVED by the Delaware River Basin Commission:

1. The section of the non-tidal Delaware River known as the "Lower Delaware" between River Miles 209.5 (the downstream boundary of the Delaware Water Gap National Recreation Area) and 134.4 (the Calhoun Street Bridge near the Head of Tide at Trenton, New Jersey), is hereby classified as Significant Resource Waters.

2. The Commission's *Water Quality Regulations* and *Water Code* are amended as set forth in the attached, effective upon filing with each of the signatory parties in accordance with Section 14.2 of the *Delaware River Basin Compact*.

3. As of their effective date, these amendments are hereby incorporated in the Commission's *Comprehensive Plan*. All aspects of the rule shall be in effect for classified reaches, including the Lower Delaware, in accordance with the amended provisions and including without limitation those requirements that depend for implementation upon the determination of numeric values for existing water quality.

4. Temporary classification of the Lower Delaware River as Significant Resource Waters in accordance with Resolution No. 2005-2 and as extended by resolutions No. 2005-15, No. 2006-22, No. 2007-13, and No. 2008-3 is hereby continued and shall remain in effect until these amendments to the *Water Quality Regulations* and *Water Code* are filed in accordance with Section 14.2 of the *Compact* and a notice of final rulemaking has appeared in the *Federal Register*.

The Commission's Comment and Response Document, containing detailed responses to written and oral comments submitted on the proposed amendments, shall be finalized and made a part of the official rulemaking record for this action and shall be available for public inspection not later than upon the filing of these amendments with each of the signatory parties in accordance with Section 14.2 of the *Compact*.

Michele Putnam, Chairwoman *pro tem*

Pamela M. Bush, Esquire, Commission Secretary

ADOPTED: July 16, 2008

[The text of **Section 3.10.3 A.2.** of the Commission's *Water Quality Regulations* and *Water Code*, as amended, but excluding Table 2, follows. For additional information, see section II of this notice, above.]

2. **Special Protection Waters.**

It is the policy of the Commission that there be no measurable change in existing water quality except towards natural conditions in waters considered by the Commission to have exceptionally high scenic, recreational, ecological, and/or water supply values. Waters with exceptional values may be classified by the Commission as either Outstanding Basin Waters or Significant Resource Waters.

In determining waters suitable for classification as Special Protection Waters, the Commission will consider nomination petitions from local, state and federal agencies and governing bodies, and the public for waters potentially meeting the definition of Outstanding Basin Waters and Significant Resource Waters as described in 3.10.3A.2.a.

The following policies shall apply to waters classified by the Commission as Outstanding Basin Waters or Significant Resource Waters and their drainage areas:

a. Definitions

1) "Outstanding Basin Waters" are interstate and contiguous intrastate waters that are contained within the established boundaries of national parks; national wild, scenic and recreational rivers systems; and/or national wildlife refuges that are classified by the Commission under Subsection 2.g.1) hereof as having exceptionally high scenic, recreational, and ecological values that require special protection.

2) "Significant Resource Waters" are interstate waters classified by the Commission under Subsection 2.g.2) hereof as having exceptionally high scenic, recreational, ecological, and/or water supply uses that require special protection.

3) "Existing Water Quality" for purposes of the Special Protection Waters program is defined for a limited set of parameters, consisting of those listed in Tables 1 and 2. Existing water quality is defined in Table 1 for stream reaches between Hancock, New York and the Delaware Water Gap and in Table 2 for stream reaches between the Delaware Water Gap and Trenton, New Jersey. Where existing water quality is not defined in Tables 1 and 2, existing water quality may be defined by extrapolation from the nearest upstream or downstream Interstate Control Point, from data obtained from sites within the same ecoregion, or on the basis of best scientific judgment.

4) "Measurable Change to Existing Water Quality" is defined as an actual or estimated change in a seasonal or non-seasonal mean (for SPW waters upstream of and including River Mile 209.5¹) or median (for SPW waters downstream of River Mile 209.5) in-stream pollutant concentration that is outside the range of the two-tailed upper and lower 95 percent confidence intervals that define existing water quality.

5) "Public Interest" is a determination of all the positive and negative social, economic and water resource impacts associated with a project affecting a Significant Resource Water. A project that is in the public interest is one that, at a minimum, provides housing, employment, and/or public facilities needed to accommodate the adopted future population, land use, and other goals of a community and region without causing deleterious impacts on the local and regional environment and economy. In general, such a project would be one that conforms to a locally-adopted growth management plan which is undergoing active implementation by local officials, is supported by the larger community as a whole, and is compatible with national, state and regional objectives as well. For a project not fully meeting the above criteria, the Commission will weigh the positive and negative impacts to determine public interest.

6) "Regional Resources Management Plan" is a management plan developed and adopted by the government agency that is assigned primary responsibilities for the overall management of a National park, scenic and recreational river and/or wildlife refuge which contains waters that have been classified by the Commission as Outstanding Basin Waters. A regional resources management plan is one that addresses, among other subjects, the location and general size of allowable wastewater treatment facilities. A regional resources management plan, or applicable portions thereof, may be incorporated into the Commission's Comprehensive Plan.

7) "Natural Condition" is the ecological state of a water body that represents conditions without human influence.

8) "Non-discharging/Load Reduction Options" are options whereby the amount of

1. River Mile 209.5 is the downstream boundary of the Delaware Water Gap National Recreation Area. SPW waters upstream of and including this point received SPW designation in 1992 and SPW waters below this point received SPW designation in 2005. The water quality strategy used to support the later designation differed from that employed a decade earlier.

wastewater discharged to a surface stream is reduced by (a) instituting load reduction measures involving reductions in pollutants at the source, possibly accompanied by water conservation practices to reduce the amount of flow received at a wastewater treatment plant; and/or (b) using land-based wastewater disposal whereby treated wastewater effluent is further treated by percolation and other soil-based processes instead of in-stream processes.

9) "Natural Wastewater Treatment Systems" are soil-based, vegetative and/or aquatic wastewater treatment systems characterized by the use of low energy treatment processes that use and simulate "natural" environmental processes such as primary and secondary productivity, crop production, wetlands, ponds and others.

10) "Non-Point Sources" are sources of pollutants carried by surface and sub-surface runoff that are derived from human activities and land use.

11) "Cumulative Impact" is the net sum of all individual impacts including all point and non-point source impacts.

12) "Boundary Control Points" are locations where monitoring and other activities occur to determine existing water quality, no measurable change, and related pollution control requirements as applicable. Boundary Control Points for Outstanding Basin Waters will generally correspond to federally-established boundaries for National parks, etc. while those for Significant Resource Waters will generally correspond to the confluence of an intrastate tributary with the classified interstate water. The locations of Boundary and Interstate Control Points are described in Part C of Table 1 for the reach between Hancock, N.Y. and the Delaware Water Gap and in Tables 2A and 2B for the reach between the Delaware Water Gap and Trenton, N.J.).

13) "Interstate Control Points" are general locations used to assess water quality for purposes of defining and protecting Existing Water Quality. The locations of Boundary and Interstate Control Points are described in Part C of Table 1 for the reach between Hancock, N.Y. and the Delaware Water Gap and in Tables 2A and 2B for the reach between the Delaware Water Gap and Trenton, N.J.).

14) "Growth Management Plans" are locally developed and adopted plans expressing the social, economic, and environmental goals and objectives of the local community. A growth management plan in this context can be one plan, a series of plans, local ordinances, and other official documents of a municipality. Growth management plans outline the community's desired growth patterns and related infrastructure. To be considered in the Commission's determination of public interest, growth management plans must be undergoing active implementation and forming the basis for local governmental decisions.

15) An "Expanding Wastewater Treatment Project" is a project involving either (a) alterations or additions to an existing wastewater treatment facility that result in a reviewable project in accordance with the Commission's *Rules of Practice and Procedure*; or (b) a new load or increased flow or loading from an existing facility that was not included in a NPDES permit or docket effective on the date of SPW designation.

16) "Substantial Alterations or Additions" are those additions and alterations resulting in: (a) a complete upgrade or modernization of an existing wastewater treatment plant, including substantial replacement or rehabilitation of the existing wastewater treatment process or major physical structures such as headworks, settling tanks, and biological/chemical treatment and filtration tanks, whether conducted as a single phase or a multi-phased project or related projects; or (b) a new load or increased flow or loading from an existing facility that was not included in a NPDES permit or docket effective on the date of SPW designation. Among other projects, modifications made solely to address wet weather flows; and alterations that are limited to changes in the method of disinfection and/or the addition of treatment works for nutrient removal are not deemed to be "Substantial Alterations or Additions."

17) "Load" and "loading" are used interchangeably in these regulations and refer to the amount of a substance or material, expressed as a weight per unit time (pounds per day, for example), that is discharged from a facility.

18) "Incremental load" and "incremental loading" are used interchangeably in these regulations and refer to the load that is greater than the actual load discharged by a facility at the time of SPW designation.

19) "Best Management Practices" are any structural or non-structural measure designed to reduce stormwater runoff and resulting non-point source loads.

20) "Watershed Non-Point Source Management Plan" is a plan prepared for a watershed that describes the basis for, and overall control strategy of, a plan for controlling, limiting, and abating all

relevant non-point source loadings within the watershed. The plan will identify and assess important natural and anthropogenic features and influences on water quality; existing local, state and other non-point source control programs; potential non-point source loads on Special Protection Waters; watershed-specific protection requirements; and the institutional needs and arrangements required to implement the plan.

21) "Non-Point Source Pollution Control Plan" is a plan describing the Best Management Practices to be used at the project site and in the project service area to control increases in non-point source pollutant loadings resulting from the project.

22) "Priority Watershed" is a watershed that has been evaluated in conjunction with other watersheds draining to Special Protection Waters and designated by the Commission as having a substantial potential pollution impact on the water quality of Special Protection Waters in comparison with other watersheds.

b. No Measurable Change to Existing Water Quality

1) Outstanding Basin Waters shall be maintained at their existing water quality. Point and non-point sources of pollutants originating from outside the boundaries of stream reaches classified as Outstanding Basin Waters shall be treated as required and then dispersed in the receiving water so that no measurable change occurs at Boundary and Interstate Control Points. Point sources of pollutants discharged to Outstanding Basin Waters shall be treated as required and then dispersed in such a manner that complete mixing of effluent with the receiving stream is, for all practical intents and purposes, instantaneous.

2) Significant Resource Waters shall not be degraded below existing water quality as defined in these regulations, although localized degradation of water quality may be allowed for initial dilution if the Commission, after consultation with the state NPDES permitting agency, finds that the public interest warrants these changes. Point and non-point sources of pollutants originating from outside the boundaries of stream reaches classified as Significant Resource Waters shall be treated as required and then dispersed in the receiving water so that no measurable change occurs at Boundary and Interstate Control Points, unless a mixing zone is allowed in Significant Resource Waters, and then to the extent of the mixing zone designated as set forth in this section. If degradation of water quality is allowed for initial dilution purposes, the Commission, after consultation with the state NPDES permitting agency, will designate mixing zones for each point source and require the highest possible point source treatment levels necessary to limit the size and extent of the mixing zones. The dimensions of the mixing zone will be determined by the Commission after consultation with the state NPDES permitting agency based upon an evaluation of (a) site-specific conditions, including channel characteristics; (b) the cost and feasibility of treatment technologies; and (c) the design of the discharge structure. Mixing zones will be developed using the wastewater treatment facility design conditions and low ambient flow conditions unless site-specific characteristics indicate otherwise. Non-point sources shall be subject to the requirements of Section 3.10.3 A.2.e. for the implementation of non-point source control plans.

c. Allowable Discharges

1. Direct discharges of wastewater to Special Protection Waters are discouraged. The following categories of projects discharging directly to Special Protection Waters may be approved only after the applicant demonstrates that it has fully evaluated all non-discharge/load reduction alternatives and is unable to implement these alternatives because of technical and/or financial infeasibility: new wastewater treatment facilities and substantial alterations or additions to existing wastewater treatment facilities. When evaluating non-discharge/load reduction alternatives, the applicant shall consider alternatives to any and all loadings – both existing and proposed – in excess of actual loadings at the time of SPW designation.

2) The following categories of projects within the drainage area of Special Protection Waters may be approved only after the applicant demonstrates that it has fully evaluated all natural wastewater treatment system alternatives and is unable to implement these alternatives because of technical and/or financial infeasibility: new wastewater treatment facilities and substantial alterations or additions to existing wastewater treatment facilities. When evaluating natural treatment alternatives, the applicant shall consider alternatives to any and all loadings – both existing and proposed – in excess of actual loadings at the time of SPW designation.

3) The following categories of projects discharging directly to Significant Resource Waters may be approved only following a determination that the project is in the public interest as that term is defined in Section 3.10.3.A.2.a.5): new wastewater treatment facilities and substantial alterations or additions to existing wastewater treatment facilities.

4) The general number, location and size of future wastewater treatment facilities discharging to Outstanding Basin Waters (if any) shall be developed taking into consideration any adopted regional resource management plan as defined in Section 3.10.3 A.2.a.6) and, on an individual project basis, considering

the feasibility of non-discharge/load reduction alternatives.

d. Wastewater Treatment Facilities

1) All wastewater treatment facilities discharging to waters classified as Special Protection Waters shall have available standby power facilities unless it can be shown that a proposed discharge can be interrupted for an extended period with no threat to the water quality of Special Protection Waters. Existing facilities must comply with this requirement upon their next permit renewal under the delegated national pollutant discharge elimination system (NPDES) permit program.

2) All wastewater treatment facilities discharging to Special Protection Waters that are not staffed 24 hours every day shall have a remote alarm that will continuously monitor plant operations whenever the plant is not staffed. The alarm system will be designed to alert someone available with authority and knowledge to take appropriate action. Existing facilities must comply with this requirement upon their next permit renewal under the delegated NPDES program.

3) All new wastewater treatment facilities discharging to Outstanding Basin Waters shall not have visual discharge plumes. Existing facilities must comply with this requirement upon their next permit renewal under the delegated NPDES program.

4) All new wastewater treatment facilities discharging to Special Protection Waters shall prepare and implement an emergency management plan following the guidance provided in the Water Pollution Control Federation's *Manual of Practice SM-8, Emergency Planning for Municipal Wastewater Facilities*, the U.S. EPA's *Design Criteria for Mechanical, Electric and Fluid System and Component Reliability* or other suitable manuals. Emergency management plans shall include an emergency notification procedure covering all affected downstream users. Existing facilities must comply with this requirement upon their next permit renewal under the delegated NPDES program.

5) The minimum level of wastewater treatment for the following categories of projects will be "Best Demonstrable Technology" as defined below: all new wastewater treatment facilities and all projects involving substantial alterations or additions to existing wastewater treatment facilities when the new or expanding facility discharges directly to Outstanding Basin Waters or Significant Resource Waters. Equivalent effluent criteria for industrial facilities and seasonal limits, if any, will be developed on a case-by-case basis. The following 30-day average effluent criteria define Best Demonstrable Technology*:

5-day CBOD:	10 mg/l or less
Dissolved oxygen:	6.0 mg/l or greater
Total suspended solids:	10 mg/l or less
Ammonia-nitrogen:	1.5 mg/l or less
Total nitrogen:	10.0 mg/l or less
Total phosphorus:	2.0 mg/l or less
Fecal coliform:	50/100 ml or less

* The effluent criteria that define Best Demonstrable Technology (BDT) were established by these Regulations in 1992 when DRBC originally promulgated the Special Protection Waters regulations for point source discharges. Although treatment technologies have advanced since that year, these "BDT" criteria have been retained for the limited purposes of the SPW program. BDT as defined herein may be superseded, however, by applicable federal, state or DRBC criteria that are more stringent.

6) Best demonstrable technology for disinfection shall be ultraviolet light disinfection or an equivalent disinfection process that results in no harm to aquatic life, does not produce toxic chemical residuals, and results in effective bacterial and viral destruction.

7) For wastewater treatment facility discharge projects that satisfy applicable requirements of Sections 3.10.3 A.2.b. through d. above, the Commission may approve effluent trading on a voluntary basis between point sources within the same watershed or between the same Interstate or Boundary Control Points to achieve no measurable change to existing water quality. Applicants seeking the Commission's approval for a trade must demonstrate equivalent load and pollutant reductions and the ability (through contracts, docket conditions, NPDES effluent limits or other legal instruments) to ensure continuous achievement of the required reductions for a term of not less than five (5) years or the time required for the point source(s) to install the treatment needed to demonstrate no measurable change to Existing Water Quality, whichever term is longer.

States will be encouraged to incorporate appropriate conditions in the next NPDES permits issued to the trading dischargers.

8) For wastewater treatment facilities within the drainage area to Special Protection Waters, the actual loads and design flows included in a NPDES permit or docket effective at the time of Special Protection Waters designation ("SPW designation") may continue without triggering the additional treatment requirements and alternatives analyses required by these regulations. However, when Substantial Alterations or Additions as defined herein are proposed, although the actual discharge at the time of SPW designation remains exempt from additional requirements, the proposed expansion cannot be approved until (a) the applicant demonstrates that it has evaluated all non-discharge load reduction alternatives for all or a portion of the incremental load and is unable to implement these alternatives because of technical or financial infeasibility (for discharges directly to Outstanding Basin Waters (OBW) and Significant Resource Waters (SRW)); (b) the applicant demonstrates that it has evaluated all natural wastewater treatment system alternatives for all or a portion of the incremental load and is unable to implement these alternatives because of technical or financial infeasibility (for discharges directly to OBW and SRW and for tributary discharges); (c) the Commission has determined that the project is demonstrably in the public interest as defined herein (for discharges directly to SRW); (d) the minimum level of treatment to be provided for the incremental discharge is Best Demonstrable Technology as defined herein (for discharges directly to OBW and SRW); and (e) the applicant demonstrates that the project will cause no measurable change to Existing Water Quality as defined herein (for discharges directly to OBW and SRW and for tributary discharges).

9) For wastewater treatment facility projects subject to the no measurable change requirement, the demonstration of no measurable change to existing water quality shall be satisfied if the applicant demonstrates that the new or incremental increase in the facility's flow or load will cause no measurable change at the relevant water quality control point for the parameters denoted by asterisks in Tables 1 and 2 of this section: ammonia (NH_3N); dissolved oxygen (DO); fecal coliform (FC); nitrate (NO_3N) or nitrite + nitrate ($\text{NO}_2\text{N} + \text{NO}_3\text{N}$); total nitrogen (TN) or total Kjeldahl nitrogen (TKN); total phosphorus (TP); total suspended solids (TSS); and biological oxygen demand (BOD) (Table 1 only). In making the demonstration required in the preceding sentence the applicant shall use a DRBC-approved model of the tributary or main stem watershed if available. Where a DRBC-approved model is not available, the applicant shall use other methodologies submitted to and approved in advance by the Commission to estimate cumulative effect at the applicable control point.

e. Control of Non-Point Sources

1) Projects subject to review under Section 3.8 of the Compact that are located in the drainage area of Special Protection Waters must submit for approval a Non-Point Source Pollution Control Plan that controls the new or increased non-point source loads generated within the portion of the project's service area which is also located within the drainage area of Special Protection Waters.

The plan will document which Best Management Practices described in handbooks, manuals and other documents prepared by the applicable state environmental agency that the project sponsor will use to control, to the extent possible, the non-point source loads from the project.

In approving the plan, the Commission may consider, but not require, tradeoffs, that the project sponsor might propose, between the reduction of potential new non-point source loads and (a) equivalent reductions in existing non-point source loads; (b) equivalent point source loads; and (c) equivalent non-point source loads from outside the affected service area. Applicants desiring Commission approval of tradeoff strategies must provide information concerning the amount of non-point source loads to be reduced through an equivalent tradeoff process and, where necessary, the enforceable mechanisms and/or agreements required to implement the tradeoffs. Where tradeoffs have been approved, control measures for existing non-point sources must be substantially in-place prior to project operation.

The Executive Director may, upon agreement with the state, delegate review and approval responsibilities under this section to the appropriate state environmental agency.

Exceptions to this policy are:

(a) Public authorities, other special purpose districts, and private corporations that do not have the legal authority to implement non-point source controls in their new or expanded service areas. Such entities are subject, however, to the requirement set forth in paragraph 3.10.3 A.2.e.2) below, that no new connection may be approved unless the area(s) served is (are) regulated by a non-point source pollution control plan approved by the Commission.

(b) The requirement for service area non-point source control plans

is automatically satisfied if the project service area is part of a watershed non-point source management plan that has been adopted into the Commission's Comprehensive Plan and is being implemented.

(c) Projects located above major surface water impoundments listed in Section 3.10.3.A.2.g.5) where time of travel and relevant hydraulic and limnological factors preclude a direct impact on Special Protection Waters.

(d) Projects located in municipalities that have adopted and are actively implementing non-point source/stormwater control ordinances that have been reviewed and approved by the Commission.

(e) Projects located in watersheds where the applicable state environmental agency, county government, and local municipalities are participating in the development of a watershed plan being prepared under the auspices of these regulations, the federal Clean Water Act, or state initiatives.

2) Approval of a new or expanded water withdrawal and/or wastewater discharge project will be subject to the condition that any new connection to the project system only serve an area(s) regulated by a non-point source pollution control plan which has been approved by the Commission.

3) Within two years after the adoption of Special Protection Waters non-point source control regulations, the Commission shall, after substantial consultation with local, county, state and federal agencies and the general public, publish a report presenting its methodology for prioritizing watersheds in the Special Protection Waters drainage area including alternatives, if any; a preliminary listing of priority watersheds in the drainage area; and a recommended plan of study for the development of watershed-specific management plans. For waters classified as Special Protection Waters after December 1992, the watershed prioritization process will be completed within two years after the Special Protection Waters are classified.

Watershed priorities will be determined from a comparative analysis of each watershed's location and potential, future impact on existing water quality at designated Boundary and Interstate Control Points. In determining priorities, the Commission will consider:

(a) the physical characteristics of the watershed including slopes, soils, existing land use and land cover, drainage characteristics, and others;

(b) the status of existing water quality and trends, if any, of the watershed as measured at its Boundary Control Point;

(c) the anticipated mass loadings of new non-point sources;

(d) the watershed management and planning priorities of applicable local, state and federal agencies;

(e) the current status of local land use/non-point source controls in the watershed;

(f) the stormwater permitting activity in the NPDES permitting program; and

(g) other natural and anthropogenic factors.

4) Once the public has been given an opportunity to comment, the Commission will adopt a list of priority watersheds. This listing will be reviewed and modified as necessary on a two year basis after adoption.

5) Within five years after adopting a list of priority watersheds draining to Special Protection Waters, the Commission shall develop, or encourage the development of, watershed non-point source management plans for each priority watershed unless new circumstances result in deferring plan completion. Watershed non-point source management plans will focus on non-point source loadings, but will consider total loads including both point and non-point sources and their interrelationship where necessary.

During plan development, the Commission will seek technical assistance from the applicable state environmental agency and all other applicable federal, state, county, and local governmental units; and will consider direct delegation of plan development (with concurrence of the state environmental agency) to any county or other applicable governmental entity desiring to perform the watershed planning activities on behalf of, or instead of, the Commission. Where more than one political unit shares a watershed, joint plan development arrangements between the Commission and delegated agencies will be developed.

6) Watershed management plans developed by the Commission, or approved by the Commission will be incorporated into the Commission's Comprehensive Plan in accordance with the *Rules of*

Practice and Procedure.

7) The Commission shall encourage the voluntary development of watershed management plans for tributary watersheds entering Special Protection Waters and local non-point source regulatory programs that conform to the goals and objectives of the Special Protection Waters regulations as promulgated in Sections 3.10.3A.2. Within the limits of its resources, the Commission will provide technical assistance, a clearinghouse for non-point sources information, regulatory authority, inter-agency coordination, and other services to local and other governmental units desiring to develop and implement stormwater and non-point source watershed plans and local regulatory programs.

8) The Commission shall encourage the submission of watershed management plans prepared voluntarily and independently from these regulations for consideration of inclusion into the Commission's Comprehensive Plan.

f. Policies Regarding Inter-Government Responsibilities

1) Inter-relationship of State and Commission Responsibilities.

The applicable state environmental agency shall assure to the extent possible that existing water quality in Special Protection Waters is not measurably changed by pollution discharged into the intrastate tributary watersheds within its jurisdiction. For water quality management purposes, the state environmental agency and the Commission will jointly establish Boundary Control Points as described in Section 3.10.3.A.2a.12) and g.4).

In performing this responsibility, the state environmental agency shall require that all new or expanding wastewater treatment facilities and existing wastewater treatment plants applying for a discharge permit or permit renewal under the delegated NPDES program to comply with the policies as prescribed in Section 3.10.3.A.2.d. unless it can be demonstrated, after consultation with the Commission, that these requirements are not necessary for the protection of existing water quality in the Special Protection Waters due to distance from Special Protection Waters, time of travel, the existence of water storage impoundments, the waste assimilation characteristics of the receiving stream, and other relevant hydrological and limnological factors.

The Commission shall, to the extent practicable and necessary, coordinate and oversee all Special Protection Waters activities and assist the efforts of each state environmental agency to control pollutants originating from intrastate tributary watersheds. The Commission shall determine pollution control requirements for discharges to Special Protection Waters; for non-point sources draining directly into Special Protection Waters; and total non-point source loads emanating from intrastate tributary watersheds as measured at Boundary Control Points.

g. Classified Special Protection Waters

1) The following stream reaches are classified as Outstanding Basin Waters:

(a) The Upper Delaware Scenic and Recreational River (Delaware River between River Mile 330.7 and 258.4);

(b) Those portions of intrastate tributaries located within the established boundary of the Upper Delaware Scenic and Recreational River Corridor;

(c) The Middle Delaware Scenic and Recreational River (Delaware River between River Miles 250.1 and 209.5);

(d) Those portions of tributaries located within the established boundary of the Delaware Water Gap National Recreation Area.

2) The following stream reaches are classified as Significant Resource Waters:

(a) The Delaware River between River Miles 258.4 (the downstream boundary of the Upper Delaware Scenic and Recreational River) and 250.1 (the upstream boundary of the Delaware Water Gap National Recreation Area);

(b) The Lower Delaware River between River Miles 209.5 (the downstream boundary of the Delaware Water Gap National Recreation Area) and 134.34 (the Calhoun Street Bridge near the Head of Tide at Trenton, NJ).

3) Definitions of Existing Water Quality for waters classified in paragraphs 1) and 2) above are presented in Part A of Table 1 for the Upper Delaware Scenic & Recreational River and Part B of Table 1 for the reach from Millrift, Pa. to the Delaware Water Gap, including the Middle Delaware Scenic and Recreational River; and in Table 2 for the reach between the Delaware Water Gap and Trenton, N.J.

4) The locations of Boundary and Interstate Control Points are described in Part C of

Table 1 for the reach between Hancock, N.Y. and the Delaware Water Gap and in Table 2 for the reach between the Delaware Water Gap and Trenton, N.J.

5) Major surface water impoundments referenced in Section 3.10.3A.2.e.1)c.) are the following:

- (a) Cannonsville Reservoir (New York State)
- (b) Pepacton Reservoir (New York State)
- (c) Neversink Reservoir (New York State)
- (d) Lake Wallenpaupack (Pennsylvania)
- (e) Mongaup System (New York State).

TABLE 1. DEFINITION OF EXISTING WATER QUALITY IN THE DELAWARE RIVER BETWEEN HANCOCK, NEW YORK AND THE DELAWARE WATER GAP¹

PART A: UPPER DELAWARE SCENIC & RECREATIONAL RIVER ²				
PARAMETER	MEAN	95 PERCENT CONFIDENCE LIMITS OF MEAN	10TH AND 90TH PERCENTILES	ADDITIONAL
Dissolved oxygen* (mg/l)	9.0	8.9 to 9.2	7.5 and 11.0	Never below 6.0 mg/l (night time); May-Sept; reachwide
BOD ₅ * (mg/l)	0.67	0.6 to 0.8	0.3 and 1.9	May-Sept; reachwide
Conductivity (umhos/cm)	68	66.6 to 69.3	52 and 88	non-seasonal; reachwide
Fecal coliform* (colonies/100 ml)	24	21 to 28	4 and 200	May-Sept; reachwide
Total suspended* solids (mg/l)	4.0	2.9 to 5.6	2.0 and 16	non-seasonal; reachwide
Total phosphorus* (ug/l)	29	27 to 31	18 and 50	non-seasonal; reachwide
Ammonia + ammonium* (ug/l)	15	13 to 18	10 and 50	as nitrogen; May-Sept; reachwide
Ammonia + ammonium* (ug/l)	22	20 to 25	10 and 60	as nitrogen; non-seasonal; reachwide
Total kjeldahl nitrogen* (ug/l)	202	172 to 237	100 and 530	May-Sept; reachwide
Nitrite + nitrate nitrogen* (ug/l)	293	256 to 336	123 and 492	May-Sept; reachwide
Hardness (mg/l as CaCO ₃)	21	19.9 to 22.2	17.0 and 27.0	non-seasonal; reachwide
Biocriteria: Shannon-Wiener	3.6	3.4 to 3.8	2.7 and 4.3	May-Sept; reachwide
Biocriteria: Equitability	0.8	0.7 to 0.9	0.5 and 1.1	May-Sept; reachwide
Biocriteria: EPT	15.5	13.8 to 17.2	8.0 and 24.0	May-Sept; reachwide

* Wastewater treatment facility projects subject to the no measurable change requirement must demonstrate no measurable change to EWQ for this parameter. Implementation guidance should be consulted.

¹ The numeric values for Existing Water Quality set forth in Parts A, B and C of Table 1 were developed through field measurements and laboratory analysis of data collected over a time period determined by the Commission to adequately reflect the natural range of the hydraulic and climatologic factors that affect water quality. Existing water quality is defined in terms of (a) an annual or seasonal mean of the available water quality data, (b) two-tailed upper and lower 95 percent confidence limits around the mean, and (c) the 10th and 90th percentiles of the data set from which the mean was calculated.

FINAL REGULATIONS

PART B: DELAWARE RIVER FROM MILLRIFT THROUGH THE DELAWARE WATER GAP INCLUDING THE MIDDLE DELAWARE SCENIC AND RECREATIONAL RIVER ²				
PARAMETER	MEAN	95 PERCENT CONFIDENCE LIMITS OF MEAN	10TH AND 90TH PERCENTILES	ADDITIONAL
Dissolved oxygen* (mg/l)	9.2	9.1 to 9.4	7.5 and 12.8	Never below 6.0 mg/l (night time); non-seasonal; reachwide
BOD ₅ * (mg/l)	0.63	0.6 to 0.7	0.3 and 1.6	May-Sept; reachwide
Conductivity (umhos/cm)	76	75 to 77	60 and 95	non-seasonal; reachwide
Fecal coliform* (colonies/100 ml)	47	42 to 53	9 and 272	May-Sept; reachwide
Total suspended solids* (mg/l)	3.4	3.0 to 3.8	1.0 and 12.0	non-seasonal; reachwide
Total phosphorus* (ug/l)	27	25 to 29	14 and 40	May-Sept; reachwide
Ammonia + ammonium* (ug/l)	23	21 to 26	10 and 50	May-Sept; reachwide
Ammonia + ammonium* (ug/l)	41	37 to 44	10 and 187	non-seasonal; reachwide
Total kjeldahl nitrogen* (ug/l)	293	276 to 312	101 and 860	non-seasonal; reachwide
Total kjeldahl nitrogen* (ug/l)	206	189 to 225	100 and 490	May-Sept; reachwide
Nitrite + nitrate nitrogen* (ug/l)	246	233 to 260	100 and 490	non-seasonal; reachwide
Nitrite + nitrate nitrogen* (ug/l)	206	191 to 223	92 and 392	May-Sept; reachwide
Hardness (mg/l as CaCO ₃)	24	24 to 25	20 and 30	non-seasonal; reachwide
Biocriteria: Shannon-Wiener	3.6	3.4 to 3.7	3.2 and 4.1	May-Sept; reachwide
Biocriteria: Equitability	0.8	0.7 to 0.9	0.5 and 1.1	May-Sept; reachwide
Biocriteria: EPT	13.9	12.8 to 15.1	8.0 and 20.0	May-Sept; reachwide

* Wastewater treatment facility projects subject to the no measurable change requirement must demonstrate no measurable change to EWQ for this parameter. Implementation guidance should be consulted.

² The definitions of Existing Water Quality presented in Parts A and B of this table were developed by performing parametric statistical analyses using logarithmic transformation of available water quality data to derive normality. The numbers represent the anti-log of the statistical results and, thus, will differ from numbers generated by using non-transformed data. Means derived from log transformations, for example, will be lower than means derived from non-transformed data. The 95 percent confidence limits were derived from a two-tailed distribution. Biocriteria were not developed using log-transformed data. The three indices used to develop the biocriteria were derived from specialized transformations of the original data, resulting in values that are normally distributed.

PART C: BOUNDARY AND INTERSTATE CONTROL POINTS FOR THE DELAWARE RIVER BETWEEN HANCOCK, N.Y. AND THE DELAWARE WATER GAP

BOUNDARY	CONTROL POINTS	MAP REFERENCE
Northern Boundary-UDSRR	Delaware River Mile 330.7	DRBC River Mile maps & UDSRR River Management Plan
Eastern Boundary-UDSRR	New York streams in Delaware & Sullivan Counties: Blue Mill; Humphries; Abe Lord; Bouchoux; Pea; Hoolihan; Basket; Hankins; Callicoon; Mitchell Pond; Tenmile; Grassy Swamp; Narrow Falls; York Lake; Beaver Brook; Halfway; Mill; Fish Cabin; Mongaup; Shingle Kill	UDSRR River Management PLAN
Western Boundary-UDSRR	Pennsylvania streams in Wayne & Pike Counties: Shingle Hollow; Stockport; Factory; Equinunk; Weston; Little Equinunk; Cooley; Hollister; Schoolhouse; Beaverdam; Calkins; Peggy Run; Masthope; Westcolang; Lackawaxen; Verga Pond; Panther; Shohola; Twin Lakes; Pond Eddy; Bush Kill	UDSRR River Management PLAN
Northern Boundary-Eight mile reach between UDSRR and MDSRR	Delaware River Mile 258.4 (railroad crossing at Millrift, Pennsylvania)	DRBC River Mile maps; UDSRR River Management Plan
Eastern & Western Boundaries-Eight mile reach between UDSRR & MDSRR	Confluence of New York streams (Orange County); Pennsylvania streams (Pike County); and New Jersey streams (Sussex County) with the Delaware River: Sparrowbush; Neversink; Cummins	U.S.G.S. Port Jervis South & North topographic maps
Northern Boundary-DWGNRA	Delaware River Mile 250.1 near the confluence of Cummins Creek	DRBC River Mile map & DWGNRA Tract Map
Eastern Boundary-DWGNRA	New Jersey streams in Sussex County: Shimers; White; Big Flatbrook; Little Flatbrook	DWGNRA Tract Maps
Western Boundary-DWGNRA	Pennsylvania streams in Pike & Monroe Counties: Crawford Branch; Vandermark; Sawkill; Raymondskill; Conashaugh; Dry; Adams; Dingmans; Hornbeck; Deckers; Alicias; Brodhead-Hellers; Hellers; Toms; Denmark; Little Bushkill; Bushkill; Shawnee; Brodhead; Cherry; Caledonia; Slateford	DWGNRA Tract Maps
INTERSTATE	CONTROL POINTS (General Locations)	RIVER MILE
Upper Delaware Scenic & Recreational River	Buckingham Access Area	325
	Lordville Bridge	322
	Kellams Bridge	313
	Callicoon Access Areas	303
	Damacus/Cochection	298
	Skinners Falls	295
	Narrowsburg area	290
	Ten Mile River Access Area	284
	Lackawaxen Access Area	277
	Barryville/Shohola Bridge	273
Pond Eddy Bridge	266	

Delaware River between the UDSRR & the DWGNRA	Millrift	258
	Matamoras/Port Jervis	254
	Northern boundary-DWGNRA	250
Delaware Water Gap National Recreation Area	Milford Beach	247
	Dingmans Access Area	239
	Eshback Access Area	232
	Bushkill Access Area	228
	Depew Access Area	221
	Smithfield Beach	218
	Worthington S.F. Access	215
	Kittatinny Visitor Center	211
	Upstream end of Arrow Island	210

**DEPARTMENT OF AGRICULTURE
HARNESS RACING COMMISSION**

Statutory Authority: 3 Delaware Code, Section 1005 (3 **Del.C.** §10005)
3 **DE Admin. Code** 501

ORDER

Pursuant to 29 **Del.C.** §10118 and 3 **Del.C.** §10005, the Delaware Harness Racing Commission issues this Order adopting proposed amendments to the Commission's Rules. Following notice and a public hearing on June 10, 2008, the Commission makes the following findings and conclusions:

Summary of the Evidence

The Commission posted public notice of the proposed amendments to DHRC Rule 8.3.5.9.4 in the May 1, 2008 *Register of Regulations* in Volume 11, Issue 11, and for two consecutive weeks in *The News Journal* and *Delaware State News*. The Commission proposed to update Rule 8 to clarify the racing distributions.

The Commission received no written comments during May, 2008 or June, 2008. The Commission held a public hearing on June 10, 2008 and received a request for clarification of the counting of days in the proposed language from Salvatore DiMario, Executive Director of the Delaware Standardbred Owner's Association. Hugh Gallagher, Administrator of Racing and Andrew Kerber, Commission Counsel explained the counting. No further changes were proposed.

Findings of Fact and Conclusions

The public was given notice and an opportunity to provide the Commission with comments in writing and by testimony at the public hearing on the proposed amendments to the Commission's Rules.

After considering all public comment on the rule changes as proposed, the Commission hereby adopts the rule changes as proposed. The Commission believes that these rule changes will allow the Delaware Harness Racing Commission rules to more accurately reflect current policy and procedure.

The effective date of this Order will be ten (10) days from the publication of this Order in the *Register of Regulations* on September 1, 2008.

IT IS SO ORDERED this 12th day of August, 2008.

Beverly H. (Beth) Steele, Chairman

Robert (Breezy) Brown, Commissioner

George P. Staats, Commissioner

Mary Ann Lambertson, Commissioner

Kenneth Williamson, Commissioner

***Please note that no changes were made to the regulation as originally proposed and published in the May 2008 issue of the *Register* at page 1399 (11 DE Reg. 1399). Therefore, the final regulation is not being republished. A copy of the final regulation is available at:**

Harness Racing Commission

DEPARTMENT OF EDUCATION

OFFICE OF THE SECRETARY

Statutory Authority: 14 Delaware Code, Sections 122(b) and 154(e)
(14 Del.C. §122(b) and §154(e))
14 DE Admin. Code 603

REGULATORY IMPLEMENTING ORDER

603 Compliance with the Gun-Free Schools Act

I. Summary of the Evidence and Information Submitted

The Secretary of Education seeks to amend 14 **DE Admin. Code** 603 Compliance with the Gun-Free Schools Act. Minor amendments were made to reflect: 1) the policy must be on file electronically with the Department of Education; and 2) modifications to expulsion are made on a case by case basis by the chief school officer.

Notice of the proposed regulation was published in the *News Journal* and the *Delaware State News* on Thursday, July 3, 2008, in the form hereto attached as Exhibit "A". Comments were received from Governor's Advisory Council for Exceptional Children and the State Council for Persons with Disabilities regarding endorsing the regulation with minor changes related to the citation to the federal Gun-Free Schools Act. The Department has made the correction.

II. Findings of Facts

The Secretary finds that it is appropriate to amend 14 **DE Admin. Code** 603 Compliance with the Gun-Free Schools Act in order to add reporting requirements and timelines and to make a modification that expulsion are made on a case by case basis by the chief school officer.

III. Decision to Amend the Regulation

For the foregoing reasons, the Secretary concludes that it is appropriate to amend 14 **DE Admin. Code** 603 Compliance with the Gun-Free Schools Act. Therefore, pursuant to 14 **Del.C.** §122, 14 **DE Admin. Code** 603 Compliance with the Gun-Free Schools Act attached hereto as Exhibit "B" is hereby amended. Pursuant to the provision of 14 **Del.C.** §122(e), 14 **DE Admin. Code** 603 Compliance with the Gun-Free Schools Act hereby amended shall be in effect for a period of five years from the effective date of this order as set forth in Section V. below.

IV. Text and Citation

The text of 14 **DE Admin. Code** 603 Compliance with the Gun-Free Schools Act amended hereby shall be in the form attached hereto as Exhibit "B", and said regulation shall be cited as 14 **DE Admin. Code** 603 Compliance with the Gun-Free Schools Act in the Administrative Code of Regulations for the Department of Education.

V. Effective Date of Order

The actions hereinabove referred to were taken by the Secretary pursuant to 14 **Del.C.** §122 on August 18, 2008. The effective date of this Order shall be ten (10) days from the date this Order is published in the *Delaware Register of Regulations*.

IT IS SO ORDERED the 18th day of August 2008.

DEPARTMENT OF EDUCATION

Valerie A. Woodruff, Secretary of Education

603 Compliance with the Gun-Free Schools Act**1.0 Written Policy Required**

Each school district and charter school requesting assistance under the Elementary and Secondary Education Act (ESEA) shall have a written policy implementing the Gun-Free Schools Act [(20 USC 4141) (20 USC 7151)] and 11 **Del.C.** §1457(j) or its successor statute. At a minimum, the policy must contain the following elements:

- 1.1 A student who is determined to have brought a firearm to school, or to have possessed a firearm at school, shall be expelled for not less than one year.
- 1.2 Modification to the expulsion requirement may be made on a case by case basis by the chief school officer. Any modification to the expulsion requirement must be made in writing to the Department.
- 1.3 The definition of "**Firearm**" shall be the same as the meaning given to the term in ~~48 USC §921(a)~~ the federal Gun-Free Schools Zone Act [at 18 U.S.C.A. §921].

2.0 Submission of the Policy to the State Department of Education

Each school district and charter school requesting assistance under the ESEA shall submit the following to the Delaware Department of Education by June 1 each year, in such form as the Department requires:

- 2.1 An assurance that its policies comply with this regulation and with 11 **Del.C.** §1457(j) or its successor statute.
- 2.2 Descriptions of the expulsions imposed under 11 **Del.C.** §1457(j) or its successor statute and under the policy implemented in accord with this regulation.

3.0 Individuals with Disabilities Act

Nothing in this regulation shall alter a district or charter school's duties pursuant to the Individuals with Disabilities Education Act.

4.0 Reporting Requirements and Timelines

- 4.1 Each public school district and charter school shall have an electronic copy of its policy implementing the Gun-Free Schools Act [(20 USC §4141) (20 USC 7151)] and 11 **Del.C.** §1457(j) or its successor statute on file with the Department of Education.

4.2 Each public school district and charter school shall provide an electronic copy of any policy implementing the Gun-Free Schools Act [(20 USC 4141) (20 USC §7151)] and 11 Del.C. §1457(j) or its successor statute within ninety (90) days of such revision(s) regardless of whether said revisions were made as a result of changes to Federal, state or local law, regulations, guidance or policies.

1 DE Reg. 1976 (6/1/98)

7 DE Reg. 333 (9/1/03)

12 DE Reg. 9 (07/01/08)

OFFICE OF THE SECRETARY

Statutory Authority: 14 Delaware Code, Sections 122(b) and 154(e)
(14 Del.C. §122(b) and §154(e))
14 DE Admin. Code 745

REGULATORY IMPLEMENTING ORDER

745 Criminal Background Check for Public School Related Employment

I. Summary of the Evidence and Information Submitted

The Secretary of Education seeks to amend 14 DE Admin. Code 745 Criminal Background Check for Public School Related Employment. The new amendments make a cross reference to a new regulation 14 DE Admin. Code 746 Criminal Background Check for Student Teaching. The authority for the Secretary of Education to promulgate this amended regulation is based in 11 Del.C., Subchapter VI. This regulation was originally in the December 1, 2007 *Register of Regulations* to address criminal background checks for student teaching. Because of comments, the Department is proposing a separate regulation to address criminal background checks for student teaching. There are additional minor edits to this regulation that provide for how the process for criminal background checks for public school related employment relates to the criminal background check for student teaching assignments.

Notice of the proposed regulation was published in the *News Journal* and the *Delaware State News* on Thursday, July 3, 2008, in the form hereto attached as Exhibit "A". Comments were received from both the Governor's Advisory Council for Exceptional Children and the State Council for Persons with Disabilities. One of the concerns was that the bifurcation of the regulations for the public school related employment and the student teaching was confusing. In an earlier draft, the Department had combined the two processes into one regulation and it was decided the bifurcation was needed. The Department did however add clarifying language to both regulations that provides for a cross reference as to how the two regulations work in tandem. A comment was received related to the ability to appeal a criminal background suitability for employment decision to the State Board of Education. Because criminal background suitability determinations are typically made by the chief personnel officer or chief school administrator and not the local school board, these decisions would not be appealable to the State Board of Education.

II. Findings of Facts

The Secretary finds that it is appropriate to amend 14 DE Admin. Code 745 Criminal Background Check for Public School Related Employment in order to provide for a new regulation related to criminal background checks for student teaching assignments. This regulation is to work in tandem with the new 14 DE Admin. Code 746 Criminal Background Check for Student Teaching.

III. Decision to Amend the Regulation

For the foregoing reasons, the Secretary concludes that it is appropriate to amend 14 **DE Admin. Code** 745 Criminal Background Check for Public School Related Employment. Therefore, pursuant to 14 **Del.C.** §122, 14 **DE Admin. Code** 745 Criminal Background Check for Public School Related Employment attached hereto as Exhibit "B" is hereby amended. Pursuant to the provision of 14 **Del.C.** §122(e), 14 **DE Admin. Code** 745 Criminal Background Check for Public School Related Employment hereby amended shall be in effect for a period of five years from the effective date of this order as set forth in Section V. below.

IV. Text and Citation

The text of 14 **DE Admin. Code** 745 Criminal Background Check for Public School Related Employment amended hereby shall be in the form attached hereto as Exhibit "B", and said regulation shall be cited as 14 **DE Admin. Code** 745 Criminal Background Check for Public School Related Employment in the Administrative Code of Regulations for the Department of Education.

V. Effective Date of Order

The actions hereinabove referred to were taken by the Secretary pursuant to 14 **Del.C.** §122 on August 19, 2008. The effective date of this Order shall be ten (10) days from the date this Order is published in the *Delaware Register of Regulations*.

IT IS SO ORDERED the 19th day of August 2008.

DEPARTMENT OF EDUCATION

Valerie A. Woodruff, Secretary of Education

745 Criminal Background Check for Public School Related Employment

[This regulation shall apply to all individuals seeking public school related employment in a Delaware public school. Refer to 14 Admin. Code 746 Criminal Background Check for Student Teaching for the requirements and procedures related to criminal background checks for a Student Teaching Assignments in a Delaware public school.]

1.0 Definitions

"Continuously Employed" means having worked in the same public school district or charter school for at least ninety one (91) working days in the prior school year. Substitute teachers shall be considered Continuously Employed when they have worked forty five (45) days in the prior school year in any combination of Delaware school districts or charter schools. Persons ~~[participating who have participated]~~ in a Student Teaching Assignment ~~[and who have fulfilled the requirements of 14 DE Admin. Code 746]~~ shall be considered Continuously Employed ~~[when they have if they]~~ participated for forty five (45) days in the prior school year in ~~[any combination of Delaware school districts or charter schools as a student teacher]~~ the school district or charter school they are seeking public school related employment].

"Covered Personnel" means the following:

- All final candidates for public school related employment for compensation;
- All those persons who supply contracted services directly to students of a public school, or those who supply contracted services to a public school which results in regular direct access to children in or through a public school; and

- All those persons who have regular direct access to children in or through an extra duty position (also called Extra Pay for Extra Responsibility (EPER position) in public schools whether the person receives compensation or not.

Notwithstanding the above definition of Covered Personnel the following persons are not subject to these regulations:

- Instructors in adult corrections institutions;
- Instructors in adult education programs involving Apprenticeship, Trade Extension, or a vocational general interest programs, or instructors in Adult Basic Education and GED programs who do not service students under age 18;
- Directly supervised professional artists sponsored by the Division of the Arts, Arts in Education Program, Very Special Arts and the Delaware Institute for the Arts in Education; and
- Substitute food service workers.

~~["Student Teaching Assignment" means a structured, supervised learning experience for a student in a teacher education program in which the student teacher practices the skills being learned in the teacher education program and gradually assumes increased responsibility for instruction, classroom management, and other related duties for a class of students in a local school district or charter school. These skills are practiced under the direct supervision of the certified teacher who has official responsibility for the class. Refer to 14 DE Admin. Code 746 Criminal Background Check for Student Teaching for requirements and procedures related to criminal background checks for Student Teaching Assignments.]~~

10 DE Reg. 684 (10/01/06)

*Please Note: As the rest of the sections were not amended, they are not being published. A copy regulation is available at:

745 Criminal Background Check for Public School Related Employment

OFFICE OF THE SECRETARY

Statutory Authority: 14 Delaware Code, Sections 122(b) (14 Del.C. §122(b))
14 DE Admin. Code 746

REGULATORY IMPLEMENTING ORDER

746 Criminal Background Check for Student Teaching

I. Summary of the Evidence and Information Submitted

The Secretary of Education seeks to adopt a new regulation 14 DE Admin. Code 746 Criminal Background Check for Student Teaching. This new regulation requires student teachers to have criminal background checks prior to placement in a school setting. In the December 1, 2007 *Register of Regulations* amendments were made to 14 DE Admin. Code 745 Criminal Background Checks to address student teaching criminal background checks. Based on comments, the Secretary is establishing a new regulation that addresses criminal background checks for student teaching separate from the requirement for criminal background checks for public school employment. The authority to promulgate this new regulation is based in 14 Del.C. 122(a) which vests the DOE with broad authority to adopt rules and regulations "for the maintenance, administration and supervision throughout this state of a general and efficient system of free public schools and 122(b)(22) which vests the DOE with the authority to prescribe rules and regulations relating to the public school teacher preparation, recruitment and retention. In addition, 122(b)(2) mandates that the DOE adopt regulations governing the "protection of the health and physical welfare of public school students in this state." The effective date for this requirement will be July 1, 2009 to allow

time for the higher education institutions, districts, charter schools, and State Police to institute any procedural changes.

Notice of the proposed regulation was published in the *News Journal* and the *Delaware State News* on Thursday, July 3, 2008, in the form hereto attached as *Exhibit "A"*. Comments were received from both the Governor's Advisory Council for Exceptional Children and the State Council for Persons with Disabilities. One of the concerns was that the bifurcation of the regulations for the public school related employment and the student teaching was confusing. In an earlier draft, the Department had combined the two processes into one regulation and it was decided the bifurcation was needed. The Department did however add clarifying language to both regulations that provides for a cross reference as to how the two regulations work in tandem. A comment was received related to the ability to appeal a criminal background suitability determination for a student teaching placement to either the local school board or State Board of Education. The regulation does provide for an appeal process at the higher education institution. The appeal is not to the local school board or charter school board level because the higher education institution is the overseeing entity and responsible for placing students. Local school boards and charter school boards should not be burdened with reviewing student teacher appeals. In addition, because criminal background suitability determinations are typically made by the chief personnel officer or chief school administrator and not the local school board, these decisions would not be appealable to the State Board of Education. A comment was received related to the issue of how non-Delaware student teachers are regulated related to criminal background checks. The Department appreciates the observation and has taken this comment under advisement for future revision. Other minor edits were made in response to the Councils' comments.

II. Findings of Facts

The Secretary finds that it is appropriate to amend 14 **DE Admin. Code** 746 Criminal Background Check for Student Teaching in order to provide for a process for criminal background checks for student teaching assignments.

III. Decision to Amend the Regulation

For the foregoing reasons, the Secretary concludes that it is appropriate to amend 14 **DE Admin. Code** 746 Criminal Background Check for Student Teaching. Therefore, pursuant to 14 **Del.C.** §122, 14 **DE Admin. Code** 746 Criminal Background Check for Student Teaching attached hereto as *Exhibit "B"* is hereby amended. Pursuant to the provision of 14 **Del.C.** §122(e), 14 **DE Admin. Code** 746 Criminal Background Check for Student Teaching hereby amended shall be in effect for a period of five years from the effective date of this order as set forth in Section V. below.

IV. Text and Citation

The text of 14 **DE Admin. Code** 746 Criminal Background Check for Student Teaching amended hereby shall be in the form attached hereto as *Exhibit "B"*, and said regulation shall be cited as 14 **DE Admin. Code** 746 Criminal Background Check for Student Teaching in the *Administrative Code of Regulations* for the Department of Education.

V. Effective Date of Order

The actions hereinabove referred to were taken by the Secretary pursuant to 14 **Del.C.** §122 on August 19, 2008. The effective date of this Order shall be ten (10) days from the date this Order is published in the *Delaware Register of Regulations*.

IT IS SO ORDERED the 19th day of August 2008.

DEPARTMENT OF EDUCATION

Valerie A. Woodruff, Secretary of Education

746 Criminal Background Check for Student Teaching

[This regulation shall apply to candidates for a Student Teaching Assignment in a Delaware public school. Refer to 14 Admin. Code 745 Criminal Background Check for Public School Related Employment for the requirements and procedures related to criminal background checks for public school related employment in a Delaware public school.]

1.0 Definitions

“Higher Education Institution” means the Delaware college or university that has a teacher preparation program that places candidates into Student Teaching Positions in a Delaware public school district or charter school.

“Student Teaching Position” means a structured, supervised learning experience for a student in a teacher education program in which the student teacher practices the skills being learned in the teacher education program and gradually assumes increased responsibility for instruction, classroom management, and other related duties for a class of students in a local school district or charter school. These skills are practiced under the direct supervision of the certified teacher who has official responsibility for the class.

2.0 Criminal Background Check Requirements and Procedures for Student Teaching Position Candidates

- 2.1 Effective July 1, 2009, any ~~[person in candidate for]~~ a Student Teaching Position in a public school district or charter school shall be required to have a criminal background check as prescribed through this regulation.
- 2.2 The higher education institution where candidates for Student Teaching Positions are enrolled shall require all candidates to complete a Release for Criminal Background Check Information form approved by the Department of Education as a part of the assignment process for a Student Teaching Position in a Delaware public school district or charter school.
- 2.3 The candidate for a Student Teaching Position in a Delaware public school district or charter school shall be subject to the following procedures:
 - 2.3.1 After notification by the higher education institution that he/she is a candidate for a Student Teaching Position, the candidate shall present him/herself to State Bureau of Identification personnel at one of the Delaware State Police Troops that processes such criminal background checks or at an on site appointment arranged by the higher education institution.
 - 2.3.2 The candidate shall cooperate in all respects with this criminal background check process, or his/her application cannot be accepted. On completion of the procedure, the candidate will be given a Verification Form of Processing by the State Bureau of Identification, which may be shown to the candidate's placing higher education institution as proof that the candidate has completed the procedure. The candidate should retain the Verification Form of Processing for his/her records.
 - 2.3.3 ~~[The candidate shall have an original of the completed criminal background check sent to the higher education institution. An original of all information sent to the higher education institution shall be sent by the State Bureau of Identification to the candidate. The candidate shall request the State Bureau of Identification send original versions of the criminal background check to both the candidate and higher education institution.]~~
- 2.4 All costs associated with obtaining a criminal background check shall be paid for by the person seeking a student teaching position placement.

*Please Note: As the rest of the sections were not amended, they are not being published. A copy regulation is available at:

746 Criminal Background Check for Student Teaching

FINAL REGULATIONS

PROFESSIONAL STANDARDS BOARD

Statutory Authority: 14 Delaware Code, Section 1205(b) (14 **Del.C.** §1205(b))
14 **DE Admin. Code** 1531

REGULATORY IMPLEMENTING ORDER

1531 Middle Level English Language Arts Teacher

I. Summary of the Evidence and Information Submitted

The Professional Standards Board, acting in cooperation and consultation with the Department of Education, seeks the consent of the State Board of Education to amend 14 **DE Admin. Code** 1531 Middle Level English Language Arts Teacher. It is necessary to amend this regulation in order to clarify the ability of a Delaware educator who holds a standard certificate in Secondary English Language Arts to teach Middle Level English Language Arts, grades 6-8, in a Middle Level School. This regulation sets forth the requirements for a Middle Level English Language Arts Teacher.

Notice of the proposed amendment of the regulation was published in the *News Journal* and the *Delaware State News* on Monday, June 2, 2008 in the form hereto attached as Exhibit "A". The notice invited written comments. No written comments were received.

II. Findings of Facts

The Professional Standards Board and the State Board of Education find that it is appropriate to amend this regulation to comply with changes in statute.

III. Decision to Amend the Regulation

For the foregoing reasons, the Professional Standards Board and the State Board of Education conclude that it is appropriate to amend the regulation. Therefore, pursuant to 14 **Del.C.** §1205(b), the regulation attached hereto as Exhibit "B" is hereby amended. Pursuant to the provision of 14 **Del.C.** §122(e), the regulation hereby amended shall be in effect for a period of five years from the effective date of this order as set forth in Section V. below.

IV. Text and Citation

The text of the regulation amended shall be in the form attached hereto as Exhibit "B", and said regulation shall be cited as 14 **DE Admin. Code** 1531 of the *Administrative Code of Regulations* of the Department of Education.

V. Effective Date of Order

The effective date of this Order shall be ten (10) days from the date this Order is published in the *Delaware Register of Regulations*.

APPROVED BY THE PROFESSIONAL STANDARDS BOARD THE 7TH DAY OF AUGUST, 2008

Kathleen Thomas, Chair
Joanne Christian
Samtra Devard
Cathy Zimmerman

Cristy Greaves
Marilyn Dollard
Karen Gordon
David Kohan

Lori Hudson
Jill Lewandowski
Gretchen Pikus
Michael Thomas

Whitney Price
Wendy Murray
Karen Schilling-Ross
Carol Vukelich

FOR IMPLEMENTATION BY THE DEPARTMENT OF EDUCATION:

Valerie A. Woodruff, Secretary of Education

IT IS SO ORDERED THIS 21ST DAY OF AUGUST, 2008

STATE BOARD OF EDUCATION

Jean W. Allen, President
G. Patrick Heffernan
Barbara Rutt
Dr. Terry M. Whittaker

Richard M. Farmer, Jr., Vice President
Jorge L. Melendez
Dennis J. Savage

***Please note that no changes were made to the regulation as originally proposed and published in the June 2008 issue of the *Register* at page 1561 (11 DE Reg. 1561). Therefore, the final regulation is not being republished. A copy of the final regulation is available at:**

1531 Middle Level English Language Arts Teacher

PROFESSIONAL STANDARDS BOARD

Statutory Authority: 14 Delaware Code, Section 1205(b) (14 **Del.C.** §1205(b))
14 **DE Admin. Code** 1532

REGULATORY IMPLEMENTING ORDER

1532 Middle Level Mathematics Teacher

I. Summary of the Evidence and Information Submitted

The Professional Standards Board, acting in cooperation and consultation with the Department of Education, seeks the consent of the State Board of Education to amend 14 **DE Admin. Code** 1532 Middle Level Mathematics Teacher. It is necessary to amend this regulation in order to clarify the ability of a Delaware educator who holds a standard certificate in Secondary Mathematics to teach Middle Level Mathematics, grades 6-8, in a Middle Level School. This regulation sets forth the requirements for a Middle Level Mathematics Teacher.

Notice of the proposed amendment of the regulation was published in the *News Journal* and the *Delaware State News* on Monday, June 2, 2008 in the form hereto attached as Exhibit "A". The notice invited written comments. No written comments were received.

II. Findings of Facts

The Professional Standards Board and the State Board of Education find that it is appropriate to amend this regulation to comply with changes in statute.

III. Decision to Amend the Regulation

For the foregoing reasons, the Professional Standards Board and the State Board of Education conclude that it is appropriate to amend the regulation. Therefore, pursuant to 14 **Del.C.** §1205(b), the regulation attached hereto as Exhibit "B" is hereby amended. Pursuant to the provision of 14 **Del.C.** §122(e), the regulation hereby amended shall be in effect for a period of five years from the effective date of this order as set forth in Section V. below.

IV. Text and Citation

The text of the regulation amended shall be in the form attached hereto as Exhibit "B", and said regulation shall be cited as 14 **DE Admin. Code** 1532 of the *Administrative Code of Regulations* of the Department of Education.

V. Effective Date of Order

The effective date of this Order shall be ten (10) days from the date this Order is published in the *Delaware Register of Regulations*.

APPROVED BY THE PROFESSIONAL STANDARDS BOARD THE 7TH DAY OF AUGUST, 2008

Kathleen Thomas, Chair	Cristy Greaves
Joanne Christian	Marilyn Dollard
Samtra Devard	Karen Gordon
Cathy Zimmerman	David Kohan
Lori Hudson	Whitney Price
Jill Lewandowski	Wendy Murray
Gretchen Pikus	Karen Schilling-Ross
Michael Thomas	Carol Vukelich

FOR IMPLEMENTATION BY THE DEPARTMENT OF EDUCATION:

Valerie A. Woodruff, Secretary of Education

IT IS SO ORDERED THIS 21ST DAY OF AUGUST, 2008

STATE BOARD OF EDUCATION

Jean W. Allen, President	Richard M. Farmer, Jr., Vice President
G. Patrick Heffernan	Jorge L. Melendez
Barbara Rutt	Dennis J. Savage
Dr. Terry M. Whittaker	

***Please note that no changes were made to the regulation as originally proposed and published in the June 2008 issue of the *Register* at page 1562 (11 DE Reg. 1562). Therefore, the final regulation is not being republished. A copy of the final regulation is available at:**

1532 Middle Level Mathematics Teacher

PROFESSIONAL STANDARDS BOARD

Statutory Authority: 14 Delaware Code, Section 1205(b) (14 **Del.C.** §1205(b))
14 **DE Admin. Code** 1533

REGULATORY IMPLEMENTING ORDER

1533 Middle Level Science Teacher

I. Summary of the Evidence and Information Submitted

The Professional Standards Board, acting in cooperation and consultation with the Department of Education, seeks the consent of the State Board of Education to amend 14 **DE Admin. Code** 1533 Middle Level Science Teacher. It is necessary to amend this regulation in order to clarify the ability of a Delaware educator who holds a standard certificate in Secondary Science to teach Middle Level Science, grades 6-8, in a Middle Level School. This regulation sets forth the requirements for a Middle Level Science Teacher.

Notice of the proposed amendment of the regulation was published in the News Journal and the *Delaware State News* on Monday, June 2, 2008 in the form hereto attached as Exhibit "A". The notice invited written comments. No written comments were received.

II. Findings of Facts

The Professional Standards Board and the State Board of Education find that it is appropriate to amend this regulation to comply with changes in statute.

III. Decision to Amend the Regulation

For the foregoing reasons, the Professional Standards Board and the State Board of Education conclude that it is appropriate to amend the regulation. Therefore, pursuant to 14 **Del.C.** §1205(b), the regulation attached hereto as Exhibit "B" is hereby amended. Pursuant to the provision of 14 **Del.C.** §122(e), the regulation hereby amended shall be in effect for a period of five years from the effective date of this order as set forth in Section V. below.

IV. Text and Citation

The text of the regulation amended shall be in the form attached hereto as Exhibit "B", and said regulation shall be cited as 14 **DE Admin. Code** 1533 of the *Administrative Code of Regulations* of the Department of Education.

V. Effective Date of Order

The effective date of this Order shall be ten (10) days from the date this Order is published in the *Delaware Register of Regulations*.

APPROVED BY THE PROFESSIONAL STANDARDS BOARD THE 7TH DAY OF AUGUST, 2008

Kathleen Thomas, Chair
Joanne Christian
Samtra Devard
Cathy Zimmerman
Lori Hudson
Jill Lewandowski

Cristy Greaves
Marilyn Dollard
Karen Gordon
David Kohan
Whitney Price
Wendy Murray

Gretchen Pikus
Michael Thomas

Karen Schilling-Ross
Carol Vukelich

FOR IMPLEMENTATION BY THE DEPARTMENT OF EDUCATION:

Valerie A. Woodruff, Secretary of Education

IT IS SO ORDERED THIS 21ST DAY OF AUGUST, 2008

STATE BOARD OF EDUCATION

Jean W. Allen, President
G. Patrick Heffernan
Barbara Rutt
Dr. Terry M. Whittaker

Richard M. Farmer, Jr., Vice President
Jorge L. Melendez
Dennis J. Savage

*Please note that no changes were made to the regulation as originally proposed and published in the June 2008 issue of the *Register* at page 1565 (11 DE Reg. 1565). Therefore, the final regulation is not being republished. A copy of the final regulation is available at:

1533 Middle Level Science Teacher

PROFESSIONAL STANDARDS BOARD

Statutory Authority: 14 Delaware Code, Section 1205(b) (14 Del.C. §1205(b))
14 DE Admin. Code 1534

REGULATORY IMPLEMENTING ORDER

1534 Middle Level Social Studies Teacher

I. Summary of the Evidence and Information Submitted

The Professional Standards Board, acting in cooperation and consultation with the Department of Education, seeks the consent of the State Board of Education to amend 14 **DE Admin. Code** 1534 Middle Level Social Studies Teacher. It is necessary to amend this regulation in order to clarify the ability of a Delaware educator who holds a standard certificate in Secondary Social Studies to teach Middle Level Social Studies, grades 6-8, in a Middle Level School. This regulation sets forth the requirements for a Middle Level Social Studies Teacher.

Notice of the proposed amendment of the regulation was published in the *News Journal* and the *Delaware State News* on Monday, June 2, 2008 in the form hereto attached as Exhibit "A". The notice invited written comments. No written comments were received.

II. Findings of Facts

The Professional Standards Board and the State Board of Education find that it is appropriate to amend this regulation to comply with changes in statute.

III. Decision to Amend the Regulation

For the foregoing reasons, the Professional Standards Board and the State Board of Education conclude that it is appropriate to amend the regulation. Therefore, pursuant to 14 **Del.C.** §1205(b), the regulation attached hereto

as Exhibit "B" is hereby amended. Pursuant to the provision of 14 **Del.C.** §122(e), the regulation hereby amended shall be in effect for a period of five years from the effective date of this order as set forth in Section V. below.

IV. Text and Citation

The text of the regulation amended shall be in the form attached hereto as Exhibit "B", and said regulation shall be cited as 14 **DE Admin. Code** 1534 of the *Administrative Code of Regulations* of the Department of Education.

V. Effective Date of Order

The effective date of this Order shall be ten (10) days from the date this Order is published in the *Delaware Register of Regulations*.

APPROVED BY THE PROFESSIONAL STANDARDS BOARD ON THE 7TH DAY OF AUGUST, 2008

Kathleen Thomas, Chair	Joanne Christian
Samtra Devard	Marilyn Dollard
Karen Gordon	Cristy Greaves
Lori Hudson	David Kohan
Jill Lewandowski	Wendy Murray
Gretchen Pikus	Whitney Price
Karen Schilling-Ross	Michael Thomas
Carol Vukelich	Cathy Zimmerman

FOR IMPLEMENTATION BY THE DEPARTMENT OF EDUCATION:

Valerie A. Woodruff, Secretary of Education

IT IS SO ORDERED THIS 21ST DAY OF AUGUST, 2008

STATE BOARD OF EDUCATION

Jean W. Allen, President	Richard M. Farmer, Jr., Vice President
G. Patrick Heffernan	Jorge L. Melendez
Barbara Rutt	Dennis J. Savage
Terry M. Whittaker Ed.D.	

***Please note that no changes were made to the regulation as originally proposed and published in the June 2008 issue of the *Register* at page 1566 (11 DE Reg. 1566). Therefore, the final regulation is not being republished. A copy of the final regulation is available at**

1534 Middle Level Social Studies Teacher

FINAL REGULATIONS

PROFESSIONAL STANDARDS BOARD

Statutory Authority: 14 Delaware Code, Section 122(b)(6) (14 **Del.C.** §122(b)(6))
14 **DE Admin. Code** 1552

REGULATORY IMPLEMENTING ORDER

1552 Career and Technical Specialist

I. Summary of the Evidence and Information Submitted

The Professional Standards Board, acting in cooperation and consultation with the Department of Education, seeks the consent of the State Board of Education to amend 14 **DE Admin. Code** 1552 Career and Technical Specialist. The Career and Technical Specialist regulation is being amended to reflect the expiration date.

Notice of the proposed amendment of the regulation was published in the *News Journal* and the *Delaware State News* on Monday, June 2, 2008 in the form hereto attached as Exhibit "A". The notice invited written comments. No written comments were received.

II. Findings of Facts

The Professional Standards Board and the State Board of Education find that it is appropriate to amend this regulation to comply with changes in statute.

III. Decision to Amend the Regulation

For the foregoing reasons, the Professional Standards Board and the State Board of Education conclude that it is appropriate to amend the regulation. Therefore, pursuant to 14 **Del.C.** §1205(b), the regulation attached hereto as Exhibit "B" is hereby amended. Pursuant to the provision of 14 **Del.C.** §122(e), the regulation hereby amended shall be in effect for a period of five years from the effective date of this order as set forth in Section V. below.

IV. Text and Citation

The text of the regulation amended shall be in the form attached hereto as Exhibit "B", and said regulation shall be cited as 14 **DE Admin. Code** 1552 of the *Administrative Code of Regulations* of the Department of Education.

V. Effective Date of Order

The effective date of this Order shall be ten (10) days from the date this Order is published in the *Delaware Register of Regulations*.

APPROVED BY THE PROFESSIONAL STANDARDS BOARD ON THE 7TH DAY OF AUGUST, 2008

Kathleen Thomas, Chair

Samtra Devard

Karen Gordon

Lori Hudson

Jill Lewandowski

Gretchen Pikus

Karen Schilling-Ross

Joanne Christian

Marilyn Dollard

Cristy Greaves

David Kohan

Wendy Murray

Whitney Price

Michael Thomas

Carol Vukelich

Cathy Zimmerman

FOR IMPLEMENTATION BY THE DEPARTMENT OF EDUCATION:

Valerie A. Woodruff, Secretary of Education

IT IS SO ORDERED THIS 21ST DAY OF AUGUST, 2008

STATE BOARD OF EDUCATION

Jean W. Allen, President

G. Patrick Heffernan

Barbara Rutt

Terry M. Whittaker Ed.D.

Richard M. Farmer, Jr., Vice President

Jorge L. Melendez

Dennis J. Savage

***Please note that no changes were made to the regulation as originally proposed and published in the June 2008 issue of the *Register* at page 1568 (11 DE Reg. 1568). Therefore, the final regulation is not being republished. A copy of the final regulation is available at:**

1552 Career and Technical Specialist

PROFESSIONAL STANDARDS BOARD

Statutory Authority: 14 Delaware Code, Section 1205(b) (14 **Del.C.** §1205(b))

14 **DE Admin. Code** 1561

REGULATORY IMPLEMENTING ORDER

1561 Bilingual Teacher

I. Summary of the Evidence and Information Submitted

The Professional Standards Board, acting in cooperation and consultation with the Department of Education, seeks the consent of the State Board of Education to amend 14 **DE Admin. Code** 1561 Bilingual Teacher in order set requisite performance levels in oral and written proficiency in English and the target language, and to provide additional avenues for content knowledge attainment if a Praxis II examination is not applicable and available. This regulation sets forth the requirements for a teacher of Bilingual Education.

Notice of the proposed amendment of the regulation was published in the *News Journal* and the *Delaware State News* on Monday, June 2, 2008 in the form hereto attached as Exhibit "A". The notice invited written comments. No written comments were received.

II. Findings of Facts

The Professional Standards Board and the State Board of Education find that it is appropriate to amend this regulation to comply with changes in statute.

III. Decision to Amend the Regulation

For the foregoing reasons, the Professional Standards Board and the State Board of Education conclude that it is appropriate to amend the regulation. Therefore, pursuant to 14 **Del.C.** §1205(b), the regulation attached hereto

as Exhibit "B" is hereby amended. Pursuant to the provision of 14 **Del.C.** §122(e), the regulation hereby amended shall be in effect for a period of five years from the effective date of this order as set forth in Section V. below.

IV. Text and Citation

The text of the regulation amended shall be in the form attached hereto as Exhibit "B", and said regulation shall be cited as 14 **DE Admin. Code** 1561 of the *Administrative Code of Regulations* of the Department of Education.

V. Effective Date of Order

The effective date of this Order shall be ten (10) days from the date this Order is published in the *Delaware Register of Regulations*.

APPROVED BY THE PROFESSIONAL STANDARDS BOARD ON THE 7TH DAY OF AUGUST, 2008

Kathleen Thomas, Chair	Joanne Christian
Samtra Devard	Marilyn Dollard
Karen Gordon	Cristy Greaves
Lori Hudson	David Kohan
Jill Lewandowski	Wendy Murray
Gretchen Pikus	Whitney Price
Karen Schilling-Ross	Michael Thomas
Carol Vukelich	Cathy Zimmerman

FOR IMPLEMENTATION BY THE DEPARTMENT OF EDUCATION:

Valerie A. Woodruff, Secretary of Education

IT IS SO ORDERED THIS 21ST DAY OF AUGUST, 2008

STATE BOARD OF EDUCATION

Jean W. Allen, President	Richard M. Farmer, Jr., Vice President
G. Patrick Heffernan	Jorge L. Melendez
Barbara Rutt	Dennis J. Savage
Terry M. Whittaker Ed.D.	

***Please note that no changes were made to the regulation as originally proposed and published in the June 2008 issue of the *Register* at page 1570 (11 DE Reg. 1570). Therefore, the final regulation is not being republished. A copy of the final regulation is available at:**

1561 Bilingual Teacher

PROFESSIONAL STANDARDS BOARD

Statutory Authority: 14 Delaware Code, Section 1205(b) (14 **Del.C.** §1205(b))
14 **DE Admin. Code** 1562

REGULATORY IMPLEMENTING ORDER

1562 English to Speakers of Other Languages (ESOL) Teacher

I. Summary of the Evidence and Information Submitted

The Professional Standards Board, acting in cooperation and consultation with the Department of Education, seeks the consent of the State Board of Education to amend 14 **DE Admin. Code** 1562 English to Speakers of Other Languages (ESOL) teacher in order to provide additional avenues for content knowledge attainment, if a Praxis II examination is not applicable and available. This regulation sets forth the requirements for a teacher of English as a Second Language.

Notice of the proposed amendment of the regulation was published in the *News Journal* and the *Delaware State News* on Monday, June 2, 2008 in the form hereto attached as Exhibit "A". The notice invited written comments. No written comments were received.

II. Findings of Facts

The Professional Standards Board and the State Board of Education find that it is appropriate to amend this regulation to comply with changes in statute.

III. Decision to Amend the Regulation

For the foregoing reasons, the Professional Standards Board and the State Board of Education conclude that it is appropriate to amend the regulation. Therefore, pursuant to 14 **Del.C.** §1205(b), the regulation attached hereto as Exhibit "B" is hereby amended. Pursuant to the provision of 14 **Del.C.** §122(e), the regulation hereby amended shall be in effect for a period of five years from the effective date of this order as set forth in Section V. below.

IV. Text and Citation

The text of the regulation amended shall be in the form attached hereto as Exhibit "B", and said regulation shall be cited as 14 **DE Admin. Code** 1562 of the *Administrative Code of Regulations* of the Department of Education.

V. Effective Date of Order

The effective date of this Order shall be ten (10) days from the date this Order is published in the *Delaware Register of Regulations*.

APPROVED BY THE PROFESSIONAL STANDARDS BOARD ON THE 7TH DAY OF AUGUST, 2008

Kathleen Thomas, Chair
Samtra Devard
Karen Gordon
Lori Hudson
Jill Lewandowski

Joanne Christian
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FOR IMPLEMENTATION BY THE DEPARTMENT OF EDUCATION:

Valerie A. Woodruff, Secretary of Education

IT IS SO ORDERED THIS 21ST DAY OF AUGUST, 2008

STATE BOARD OF EDUCATION

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Richard M. Farmer, Jr., Vice President
 Jorge L. Melendez
 Dennis J. Savage

*Please note that no changes were made to the regulation as originally proposed and published in the June 2008 issue of the *Register* at page 1575 (11 DE Reg. 1575). Therefore, the final regulation is not being republished. A copy of the final regulation is available at:

1562 English to Speakers of Other Languages (ESOL) Teacher

DEPARTMENT OF HEALTH AND SOCIAL SERVICES
DIVISION OF MEDICAID AND MEDICAL ASSISTANCE

Statutory Authority: 31 Delaware Code, Section 512 (31 **Del.C.** §512)

ORDER

Pharmaceutical Services Program – Tamper-Resistant Prescription Pads

NATURE OF THE PROCEEDINGS:

Delaware Health and Social Services ("Department") / Division of Medicaid and Medical Assistance. The Department's proceedings to amend the Delaware Medical Assistance Program (DMAP) Provider Manuals to bring Medicaid policies into compliance with the Federal law regarding tamper-resistant prescription pads were initiated pursuant to 29 **Delaware Code** Section 10114 and its authority as prescribed by 31 **Delaware Code** Section 512.

The Department published its notice of proposed regulation changes pursuant to 29 **Delaware Code** Section 10115 in the July 2008 *Delaware Register of Regulations*, requiring written materials and suggestions from the public concerning the proposed regulations to be produced by July 31, 2008 at which time the Department would receive information, factual evidence and public comment to the said proposed changes to the regulations.

SUMMARY OF PROPOSAL

As a reminder, the purpose of this proposal is to update implementation of the federal law that mandates the use of tamper-resistant prescriptions for all Medicaid, non-electronic prescriptions.

Statutory Authority

Public Law 110-28, U.S. Troop Readiness, Veterans' Care, Katrina Recovery, and Iraq Accountability Appropriations Act of 2007, signed into law on May 25, 2007

Background

This proposal provides information regarding policy changes to the Delaware Medical Assistance Program (DMAP) Provider Manuals that outlines requirements for pharmacies that bill DMAP for prescriptions.

As previously announced [See 11 DE Reg 793, December 1, 2007], Congress passed H.R. 2206, U.S. Troop Readiness, Veterans' Care, Katrina Recovery, and Iraq Accountability Appropriations Act of 2007, Public Law 110-28, regarding use of tamper-resistant prescription pads. Section 7002(b) of the Act amends the federal Medicaid statute to prevent payment of prescriptions "for which the prescription was executed in written (and non-electronic) form unless the prescription was executed on a tamper-resistant pad".

Failure of a State to enforce the tamper-resistant requirement of section 7002(b) may result in the loss of Federal Financial Participation (FFP).

The Division of Medicaid and Medical Assistance (DMMA) implemented this mandate in two phases. For the first, DMMA required that, on October 1, 2007, a prescription must contain at least one of the three tamper-resistant characteristics in order to be considered "tamper resistant". For the second, a prescription must contain all three characteristics beginning October 1, 2008.

Summary of Proposed Regulation

For a pharmacy claim to be eligible for reimbursement by DMAP, any prescription executed in written (and non-electronic format) must be executed on a tamper-resistant form. DMAP will enforce the federal implementation date, as follows:

A. To be considered tamper-resistant beginning **OCTOBER 1, 2008**, a prescription form must contain **ALL THREE** of the following characteristics:

1. One or more industry-recognized features designed **to prevent unauthorized copying** of a completed or blank prescription form;
2. One or more industry-recognized features designed **to prevent the erasure or modification** of information written on the prescription by the prescriber;
3. One or more industry-recognized features designed **to prevent the use of counterfeit** prescription forms.

B. Appropriate DMAP Provider Manuals have been updated to provide additional detail including examples of features, which comply with the above requirements.

Delaware Medical Assistance Program (DMAP) provider manuals and official notices are available for downloading from the DMAP website: www.dmap.state.de.us or EDS Pharmacy Services may be contacted at (800) 999-3371- Select #0, then #1.

The Delaware Medical Assistance Program (DMAP) is merely adopting the federal statute without changing content or incorporating additional state requirements concerning the use of federally mandated tamper-resistant prescriptions.

SUMMARY OF COMMENTS RECEIVED WITH AGENCY RESPONSE

No public comments were received.

FINDINGS OF FACT:

The Department finds that the proposed changes as set forth in the July 2008 *Register of Regulations* should be adopted.

THEREFORE, IT IS ORDERED, that the proposed regulation regarding the three required characteristics of tamper-resistant prescription pads is adopted and shall be final effective September 10, 2008.

Vincent P. Meconi, Secretary, DHSS, August 14, 2008

DMMA FINAL REGULATION #08-37

REVISION:

(Regulation Number will be assigned pending further review and analysis by Department staff)

~~Effective October 1, 2007,~~ Section 1903(i) of the Social Security Act requires that written (non-electronic) prescriptions for covered outpatient drugs for Medicaid clients be executed on a tamper-resistant pad in order to be eligible for federal matching funds. To meet this requirement, DMAP will only reimburse for covered Medicaid outpatient drugs when the written (non-electronic) prescription is executed on a tamper-resistant pad, or the prescription is electronic, faxed, or verbal.

To be considered tamper-resistant beginning October 1, 2008, a prescription form must contain all three of the following characteristics:

1. One or more industry-recognized features designed to prevent unauthorized copying of a completed or blank prescription form;
2. One or more industry-recognized features designed to prevent the erasure or modification of information written on the prescription by the prescriber;
3. One or more industry-recognized features designed to prevent the use of counterfeit prescription forms.

DIVISION OF SOCIAL SERVICES

Statutory Authority: 31 Delaware Code, Section 512 (31 **Del.C.** §512)

ORDER

Food Stamp Program 9044.1 Newly-Certified Households

NATURE OF THE PROCEEDINGS:

Delaware Health and Social Services ("Department") / Division of Social Services initiated proceedings to amend Food Stamp Program policies in the Division of Social Services Manual (DSSM) regarding newly-certified households. The Department's proceedings to amend its regulations were initiated pursuant to 29 **Delaware Code** Section 10114 and its authority as prescribed by 31 **Delaware Code** Section 512.

The Department published its notice of proposed regulation changes pursuant to 29 **Delaware Code** Section 10115 in the July 2008 *Delaware Register of Regulations*, requiring written materials and suggestions from the public concerning the proposed regulations to be produced by July 31, 2008 at which time the Department would receive information, factual evidence and public comment to the said proposed changes to the regulations.

SUMMARY OF PROPOSED CHANGES

The proposed change described below amends the Food Stamp Program policies in the Division of Social Services Manual (DSSM) regarding newly-certified households.

Statutory Authority

7 CFR §274.2, Providing Benefits to Participants

Summary of Proposed Changes

DSSM 9044.1, Newly-Certified Households: Remove language references to the old issuance method of mailing benefits and replacing with Electronic Benefit Transfer (EBT) processing language.

SUMMARY OF COMMENTS RECEIVED WITH AGENCY RESPONSE

The State Council for Persons with Disabilities (SCPD) offered public comment summarized below. The Division of Social Services (DSS) has carefully considered all comments and responds as follows.

Consistent with federal law, the current standards contemplate applicants physically obtaining their "paper" benefits at a State Service Center or through mail. Since DSS has converted to a debit card system in which benefits are electronically posted to an account, DSS has changed the references to require posting no later than thirty (30) days after the filing of the application.

SCPD **endorses** the proposed regulation since it conforms to current practice.

Agency Response: DSS thanks the Council for their endorsement.

FINDINGS OF FACT:

The Department finds that the proposed changes as set forth in the July 2008 *Register of Regulations* should be adopted.

THEREFORE, IT IS ORDERED, that the proposed regulation to amend the Division of Social Services Manual (DSSM) as it relates to the Food Stamp Program regarding newly certified households is adopted and shall be final effective September 10, 2008.

Vincent P. Meconi, Secretary, DHSS, August 14, 2008

DMMA PROPOSED REGULATION #08-22

REVISION:

9044 Providing Benefits to Participants

[274.2]

DSS is responsible for the timely and accurate issuance of benefits to certified eligible households. Assist those households comprised of elderly or disabled members which have difficulty reaching issuance offices, and households which do not reside in a permanent dwelling or a fixed mailing address by finding authorized representatives to act on their behalf or by other appropriate means.

9044.1 Newly-Certified Households

All newly certified households, except those that are given expedited service, must be given an opportunity to participate no later than thirty (30) calendar days following the date the application was filed. An opportunity to participate consists of providing households with access to their benefits, ~~or having issuance facilities open and available for the households to obtain their benefits. Benefits must be mailed in time to assure that they are received, but before the 30-day standard expires.~~ A household has not been provided an opportunity to participate within the 30-day standard if the benefits are mailed on the 29th or 30th day. ~~Neither has an opportunity to participate been provided if the benefits are issued on the 28th day, but no issuance facility is open on the 30th day not posted to their EBT account by the 30th day.~~

12 DE Reg. 22 (07/01/08)

DEPARTMENT OF INSURANCE

Statutory Authority: 18 Delaware Code, Sections 314 and 2741; 21 Delaware Code, Section 2118 (18 **Del.C.** §§314 & 2741; 21 **Del.C.** §§2118)
18 DE Admin. Code 606

ORDER**606 Proof of Automobile Insurance [Formerly Regulation 31]**

Proposed amendments to Regulation 606 relating to standardization of insurance identification cards and notification to the Division of Motor Vehicles, of the termination of insurance coverage, were published in the *Register of Regulations* on July 1, 2008. The comment period remained open until August 4, 2008. There was no public hearing on proposed amendments to Regulation 606. Public notice of the proposed amended Regulation 606 in the *Register of Regulations* was in conformity with Delaware law.

Summary of the Evidence and Information Submitted

Public comment was received from two sources. The American Insurance Association (AIA) expressed support for the proposed change eliminating the requirement that Commercial Lines "fleet" vehicle identification cards contain vehicle specific identification numbers. AIA did comment that Section 6.4 of the proposed regulation, which authorizes the Commissioner to fine insurers for non-compliance, should also apply to agents and brokers. The second comment, from Property Casualty Insurers Association of America (PCI) expressed support for the changes in the proposed regulations.

Findings of Fact

Based on Delaware law and the record in this docket, I make the following findings of fact:

1. It is in the public interest that policyholders with newly issued policies be issued identification cards reflecting the period for which payment of insurance premiums have been made, or six-months, whichever period is greater.
2. It is in the public interest that Commercial Lines "fleet" vehicles carry identification cards containing ownership and insurance company information.

Decision and Effective Date

Based on the provisions of 18 **Del.C.** §§311(a) and the record in this docket, I hereby adopt amended Regulation 606 and as may more fully and at large appear in the version attached hereto to be effective on September 11, 2008.

IT IS SO ORDERED this 15th day of August 2008.

Matthew Denn, Insurance Commissioner

***Please note that no changes were made to the regulation as originally proposed and published in the July 2008 issue of the *Register* at page 23 (12 DE Reg. 23). Therefore, the final regulation is not being republished. A copy of the final regulation is available at:**

606 Proof of Automobile Insurance

DEPARTMENT OF NATURAL RESOURCES AND ENVIRONMENTAL CONTROL**DIVISION OF AIR AND WASTE MANAGEMENT**

Statutory Authority: 7 Delaware Code, Chapter 60, (7 **Del.C.** Ch. 60)

Secretary's Order No.: 2008-A-0034

Date of Issuance: August 11, 2008

Effective Date of the Amendment: September 11, 2008

I. Background

On Thursday, July 31, 2008, a public hearing was held in the Priscilla Building Conference Room of DNREC in Dover to receive public comment on a proposed revision to the State Implementation Plan (SIP) regarding administrative and non-substantive changes to Delaware's Regulations Governing the Control of Air Pollution. The purpose of this SIP revision is to make the necessary administrative changes in all existing Delaware SIP regulations so that the language uses and the styles are all consistent with Delaware's Administrative Code for drafting regulations, to wit: the Delaware Manual for Drafting Regulations (March 2006 edition). Some additional non-substantive changes and corrections of existing clerical errors have been proposed to these SIP regulations by the Department at this time as well.

It should be pointed out that the aforementioned administrative changes are completely non-substantive, and that these changes, along with the correction of clerical errors as noted above, do not alter the regulatory features of any existing individual SIP regulations (i.e., effective dates, regulatory limits and/or requirements, compliance schedules, enforcement procedures, etc.).

No public comment regarding these proposed revisions to the SIP regulations were received by the Department, either during the pre-hearing phase of this matter or at the public hearing itself on July 31, 2008, nor were any members of the public present at said hearing. Proper notice of the hearing was provided as required by law.

After the hearing, the Department performed an evaluation of the evidence entered into the record in this matter. Thereafter, the Hearing Officer prepared her report and recommendation in the form of a Hearing Officer's Report to the Secretary dated August 7, 2008, and that Report is expressly incorporated herein by reference.

II. Findings and Conclusions

On the basis of the record developed in this matter, it appears that the Air Quality Management Section of the Department has provided a sound basis for the aforementioned proposed revisions to Delaware's State Implementation Plan (SIP) and the SIP regulations. Based upon the public record, I agree that the proposed revisions, which are administrative and non-substantive in nature, should be approved as the Department's final plan at this time, as reflected in the Hearing Officer's Report of August 7, 2008, which is attached and expressly incorporated into this Order.

Moreover, the following findings and conclusions are entered at this time:

The Department has jurisdiction under its statutory authority to make a determination in this proceeding.

The Department provided adequate public notice of the proceeding and the public hearing in a manner required by the law and regulations.

The Department held a public hearing in a manner required by the law and regulations.

Delaware's SIP Regulations Governing the Control of Air Pollution, as a result of having been developed by the Department over a long period of time (approximately 40 years), have adopted different coding and numbering methods and styles. These variances have resulted in confusion and misunderstandings when updating the same. Adoption of the proposed administrative and non-substantive revisions to all of Delaware's existing SIP Regulations will result in uniform language use and style consistent with the Delaware Administrative Code for drafting regulations, to wit: the Delaware Manual for Drafting Regulations (March 2006 edition).

The adoption of the proposed SIP revisions, which are strictly administrative and non-substantive in nature, will not alter any regulatory features of any existing individual SIP regulations, such as effective dates, regulatory limits and/or requirements, compliance schedules, enforcement procedures, etc.

Moreover, the adoption of the proposed SIP revisions to correct the clerical errors present in Delaware's current SIP regulations will provide better clarity and a fuller understanding of the regulatory language contained within all existing SIP regulations to the general public and the regulated community.

The Department has an adequate record for its decision, and no further public hearing is appropriate or necessary;

The Department's proposed revisions to Delaware's current SIP regulations, as published in the July 1, 2008 *Delaware Register of Regulations* and set forth within Attachment "A" hereto, are adequately supported, not arbitrary or capricious, and consistent with the applicable laws and regulations. Consequently, it should be approved as final, and shall go into effect ten days after its publication in the next available issue of the *Delaware Register of Regulations*;

The Department shall submit the revised regulations as final regulations to the *Delaware Register of Regulations* for publication in its next available issue, and shall provide written notice to the persons affected by the Order.

III. Order

It is hereby ordered that the Department's aforementioned proposed revisions to Delaware's State Implementation Plan and its SIP regulations be made, and that the proposed revisions be promulgated in final form, in accordance with the customary and established rule-making procedure required by law.

IV. Reasons

The revisions to Delaware's SIP regulations with respect to the administrative and non-substantive changes needed at this time will not alter the regulatory features of any existing individual SIP regulation, and will bring Delaware's current SIP regulations into accordance with the Delaware Administrative Code, "Manual for Drafting Regulations (March 2006). Furthermore, this promulgation will provide better clarity and a fuller understanding of the regulatory language contained within all existing SIP regulations to the general public and the regulated community, in furtherance of the policy and purposes of 7 Del.C., Ch. 60.

John A. Hughes, Secretary

Delaware State Implementation Plan: Administrative and Non-Substantive Changes in Regulations Governing the Control of Air Pollution

Submitted To

U.S. Environmental Protection Agency

By

Delaware Department of Natural Resources and Environmental Control

~~July~~ September] 2008

Acronym List

AQM	-	Air Quality Management
AQMS	-	Air Quality Management Section of DNREC
CAA	-	Clean Air Act
CAAA	-	Clean Air Act Amendments of 1990
CFR	-	Code of Federal Regulations
DAWM	-	Division of Air and Waste Management of DNREC
DNREC	-	Delaware Department of Natural Resources and Environmental Control
EPA	-	United States Environmental Protection Agency
FR	-	Federal Register
NAAQS	-	National Ambient Air Quality Standard
NOx	-	Nitrogen Oxides
SIP	-	State Implementation Plan
VOC	-	Volatile Organic Compound

1.0 Introduction

1.1 Background

In the past three decades or so, Delaware has developed 48 regulations for ambient air quality management. Under Section 110 of the Clean Air Act (CAA), an air quality management (AQM) regulation, when relied upon to attain or maintain the national ambient air quality standards (NAAQSs), must go through public review-comment and hearing process, and then be submitted to US Environmental Protection Agency (EPA) for approval as a state implementation plan (SIP) revision.

Title 29, Chapter 101 of the **Delaware Code** (29 Del.C., Ch 101) requires that regulatory agencies in Delaware develop and adopt regulations, and publish the regulations in the *Delaware Register of Regulations* through the Registrar's Office under Division of Research of the General Assembly. The Registrar's Office has developed guidelines and drafting manuals for Delaware regulations. The latest edition of drafting and style manual, entitled "Delaware Manual for Drafting Regulations," was issued as Delaware Administrative Code in March 2006 (see Appendix A of this document, hereafter referred to as "the 2006 drafting manual" or simply as "the 2006 Manual").

Since the 2006 drafting manual was issued, several Delaware AQM regulations have been formatted to comply with the standards specified in the manual. However, a majority of the Delaware AQM regulations have not been updated.

1.2 Purpose and Scope

Among the 48 Delaware AQM regulations, 32 regulations have been approved by EPA as Delaware state implementation plan (SIP) revisions, and are listed in 40 CFR Part 52 Subpart I (hereafter referred to as SIP regulations). They are:

- Regulation 1 "Definitions and Administrative Principles";

- Regulation 1102* “Permits”;
- Regulation 3 “Ambient Air Quality Standards”;
- Regulation 4 “Particulate Emissions From Fuel Burning Equipment”;
- Regulation 5 “Particulate Emissions From Industrial Process Operations”;
- Regulation 6 “Particulate Emissions From Construction and Materials Handling”;
- Regulation 7 “Particulate Emissions From Incineration”;
- Regulation 8 “Sulfur Dioxide Emissions From Fuel Burning Equipment”;
- Regulation 9 “Emissions of Sulfur Compounds From Industrial Operations”;
- Regulation 10 “Control of Sulfur Dioxide Emissions—Kent and Sussex Counties”;
- Regulation 11 “Carbon Monoxide Emissions From Industrial Process Operations New Castle County”;
- Regulation 12 “Control of Nitrogen Oxide Emissions”;
- Regulation 1113* “Open Burning”;
- Regulation 14 “Visible Emissions”;
- Regulation 15 “Air Pollution Alert and Emergency Plan”;
- Regulation 16 “Sources Having an Interstate Air Pollution Potential”;
- Regulation 17 “Source Monitoring, Recordkeeping and Reporting”;
- Regulation 23 “Standards of Performance for Steel Plants: Electric Arc Furnaces”;
- Regulation 1124* “Control of Volatile Organic Compound Emissions”;
- Regulation 1125* “Requirements for Preconstruction Review” (Sections 1, 2 and 3);
- Regulation 26 “Motor Vehicle Emissions Inspection Program”;
- Regulation 27 “Stack Heights”;
- Regulation 31 “Low Enhanced Inspection and Maintenance Program”;
- Regulation 1132* “Transportation Conformity”;
- Regulation 35 “Conformity of General Federal Actions to the State Implementation Plans”;
- Regulation 37 “NOx Budget Program”;
- Regulation 39 “Nitrogen Oxides (NOx) Budget Trading Program”;
- Regulation 40 “Delaware’s National Low Emission Vehicle (NLEV) Regulation”;
- Regulation 41 “Limiting Emissions of Volatile Organic Compounds From Consumer and Commercial Products”;
- Regulation 42 “Specific Emission Control Requirements (Section 1)”;
- Regulation 1144* “Control of Stationary Generator Emissions”.

[* Indicating a regulation (or a section or sections therein) that has been revised after the issuance of the 2006 drafting manual. The prefix of “11” in “11###” in a regulation title number represents Delaware administrative code for Air Quality Management Section. See 2.2 of this SIP revision.]

In addition, the following regulations have been submitted to EPA as SIP revisions and pending EPA’s approvals:

- Regulation 1143 “Heavy Duty Diesel Engine Standards”;
- Regulation 1145 “Excessive Idling of Heavy Duty Vehicles”;
- Regulation 1146 “Electric Generating Unit (EGU) Multi-Pollutant Regulation”;
- Regulation 1148 “Control of Stationary Combustion Turbine Electric Generating Unit Emissions”.

The purpose of this SIP revision is to make all Delaware SIP regulations (i.e., both listed and not-yet listed in 40 CFR Part 52 Subpart I) consistent with the 2006 Manual. In addition, some non-substantive changes and corrections of errors have been made. Exclusively for this SIP revision:

- Administrative or editorial changes are those under the administrative authority granted to Delaware Registrar’s Office by 29 **Del.C.** Ch 1134 and are applicable to all Delaware regulations for consistency purpose. Therefore, all Delaware air regulations, both existing ones and future ones, shall follow.

- Non-substantive changes are those made for clarification and consistency purposes and do not alter or amend the intent or meaning of the subject regulation.
- Editorial changes also include correction of errors due to typos or misprints when a regulation was developed or revised to its current version.

The above changes are made on the current AQM regulations, and reflected by “~~strikeouts~~” for deletions and “underlines” for additions, as required by the 2006 Manual. After the above changes are made, the regulations and relevant terms (languages, codes, styles, formats, etc.) are defined as being “revised” in this SIP revision. All revised SIP regulations are presented in Appendix B of this SIP revision.

It should be pointed out that the administrative changes, non-substantive changes and corrections of errors do not alter regulatory features of individual regulations, such as effective date, applicability, regulatory limit and requirement, compliance schedule, enforcement procedures, etc.

1.3 Exclusions

The following five SIP regulations (or sections) are not included in this SIP revision:

- Regulation 31 “Low Enhanced Inspection and Maintenance Program”;
- Regulation 37 “NO_x Budget Program”;
- Regulation 41 “Limiting Emissions Of Volatile Organic Compounds From Consumer And Commercial Products (Section 2)”;
- Regulation 42 “Specific Emission Control Requirements (Section 2)”.

Regulations 31 and 41 (Section 2) are not included because they are currently under substantive revision. Regulation 1142 (Section 2) is not included because it is under consideration for revision. The administrative and non-substantive changes in those regulations (or sections) will be made in their revisions. Regulation 37 is not included because it expired in 2002.

Although the above regulations are not included in this SIP revision, they shall be referenced in the future under the new title code of “7 DE Admin Code 1100.” For example, Regulation 31 will be referenced as “7 DE Admin Code 1131”, instead “Regulation 31.” The new title codes and numbers are used for consistency purpose. See discussions in 2.2 and 2.5 of this SIP document.

Many current AQM regulations have citations of the federal laws and documents (such the Clean Air Act, the Federal Register, and the Code of Federal Regulations). Some regulations contain appendixes that are adopted directly from federal documents, and documents of other state agencies, or other sources. The administrative changes, non-substantive changes and corrections under this SIP revision do not apply to contents of those citations and the appendixes directly from the aforementioned other sources.

1.4 Non-SIP Regulations

The following AQM regulations are not included in 40 CFR Part 52 Subpart I list, but have been adopted by Delaware to deal with air quality issues not directly related to NAAQSs:

- Regulation 18 “Particulate Emissions from Grain Handling Operations”;
- Regulation 19 “Control of odorous Contaminants”;
- Regulation 20 “New Source Performance Standards”;
- Regulation 21 “Emission Standards for hazardous Air Pollutants”;
- Regulation 22 “Restriction on Quality of Fuel in Fuel Burning Equipment”;
- Regulation 1125* “Requirements for Preconstruction Review” (Section 4);

- Regulation 28 “Control of Toxic Air Contaminants-Reserved”;
- Regulation 29 “Emissions from Incineration of Infectious Waste”;
- Regulation 30 “Title V State Operating Permit Program”;
- Regulation 33 “Motor Vehicle Pressure Test and Emission Control Device Inspection Program” (Replaced by Regulation 31);
- Regulation 34 “Emission Banking and Trading Program”;
- Regulation 36 “Acid Rain Program”;
- Regulation 1138 “Emission Standards for Hazardous Air Pollutants for Source Categories”;
- Regulation 47 Reserved.

The above regulations are not considered as Delaware SIP regulations. Therefore, they are not included in this SIP revision, although the administrative and non-substantive changes in those regulations are conducted along with this SIP revision for consistency purposes. Delaware Registrar’s Office is in charge of updating those regulations under 29 **Del.C.**, Ch 1134. The **[proposed]** revisions of those non-SIP regulations can be reviewed at:

<http://regulations.delaware.gov/AdminCode/title7/1000/1100/index.shtml#TopOfPage>

Comments on those non-SP regulations can be addressed to Jeffrey Hague, Registrar of Regulations, Delaware Legislative Council, at e-mail address Jeffrey.Hague@state.de.us, or sent to Office of Registrar of Regulations, P.O. Box 1401, Dover, DE 19903.

1.5 Responsibility and Contacts

The agency with direct responsibility for preparing and submitting this SIP revision is Delaware Department of Natural Resources and Environmental Control (DNREC), Division of Air and Waste Management (DAWM), Air Quality Management Section (AQMS), under Section Administrator, Ali Mirzakhaili. The working responsibility for Delaware air quality planning and regulation development falls within AQMS’ Planning Branch, under Program Manager Ronald A. Amirikian. Frank F. Gao, Ph.D. and P.E., of the Planning Branch, is the project leader and principal author of this SIP revision. Questions and comments should be addressed to either Ronald A. Amirikian at (302)739-9402 or Ronald.Amirikian@state.de.us, or to Frank F. Gao at (302)323-4542 or Frank.Gao@state.de.us, or sent to AQMS, 156 South State Street, Doer, DE 19901.

2.0 Administrative Changes

2.1 Font Face and Size

The 2006 Manual specifies that all Delaware regulations be drafted in Arial font face and 12-point font size. Accordingly, all AQM SIP regulations are converted to Arial font face and 12-point font size under this SIP revision. This font-change is not reflected with strikeouts and underlines in the revised regulations, since such change does not alter any meaning of the subject regulations in any aspect.

2.2 Regulation Title Coding and Numbering

Historically, Delaware AQM regulations have been grouped in “Delaware Regulations Governing the Control of Air Pollution,” and numbered from 1 to 48 (Arabic numbers) without an indentifying or administrative code. Under the current Delaware administrative coding system, all AQM regulations should be under “Title 7 DNREC, 1100 Air Quality Management Section” and be coded with four digits in a format of “11##”, where the first two digits “11” specify “AQMS” and the second two digits “##” are the regulation numbers. According to this requirement, titles of all Delaware AQM regulations are recoded as follows, using Regulation No. 1 as an example, with strikeouts representing deletions and underlines for additions:

Title 7 DNREC

1100 Air Quality Management Section

REGULATION NO. 1

1101 DEFINITIONS AND ADMINISTRATIVE PRINCIPLES

Under this SIP revision, all revised regulations use a bold-face text for their titles. In case that a current title used a regular-face text, this regular-to-bold change is not indicated by using strikeouts and underlines, since such change does not alter any meaning of the title in any aspect.

2.3 Format of Definitions

Various formats for definitions of terms have been used in Delaware AQM regulations. According to the 2006 Manual, the following format has been adopted as a standard format in all AQM regulations under this SIP revision, using "heat input" as an example, with strikeouts representing deletions and underlines for additions:

"Heat input" ~~HEAT INPUT~~: The ~~means the~~ potential thermal energy resulting from the complete combustion of any fuel.

In some regulations, such as in Regulation No. 12, the terms to be defined are not bolded, but are in the standard format already. In those cases, the change from un-bolded terms to bold-face terms are not identified by strikeouts and underlines, since such change does not alter any meaning of the terms themselves and definitions that follow.

2.4 Section and Subsection Numbering

According to the format provided in the 2006 Manual, two changes are made with respect to sections in a regulation under this SIP revision: (1) All prefixes of "Section-" in section title lines are deleted; (2) Sections are numbered using a consistent format of Arabic numeral "#.0".

A majority of the current AQM regulations have subsections of various levels, and use different symbols for subsections, such as lower-case letters (a, b,...), Roman numbers (i, ii,...), Arabic numbers in parenthesis [(1), (2), ...], upper-case letters (A, B, ...), and paired lower-case letters (aa, bb, ...). According to the format provided in the 2006 Manual, all those subsection symbols in the current AQM regulations are replaced by Arabic numbers under this SIP revision.

The following is an example from Regulation 24, demonstrating changes in numbering of sections and subsections, with strikeouts representing deletions and underlines for additions:

~~**Section 4**~~**4.0** Compliance Certification, Recordkeeping, and Reporting Requirements for Coating Sources

4.1 ~~a-~~To establish the records...

4.2 ~~b-~~Requirements for coating sources...

4.2.1 ~~4-~~Certification. By November 15, 1993, the owner or operator of a facility... by providing all of the following:

4.2.1.1 ~~i-~~The name and location of the facility.

4.2.1.2 ~~ii-~~The address and...

According to the format provided in the 2006 Manual, the bold-face is adopted for section titles in all revised regulations. In those cases where a regular-to-bold face change is made, the change is not identified by strikeouts and underlines, since such change does not alter any meaning of the section title in any aspect.

2.5 Citations in Regulations

According to the 2006 Manual, all AQM regulations should be cited as Delaware Administration Code by title and regulation number (for code titles and numbers, see 2.2 of this SIP revision). Therefore, citations of another regulation are revised to the following standard format, using an excerpt from Regulation No. 2 as an example, with strikeouts representing deletions and underlines for additions:

... in an operation permit issued pursuant to ~~Regulation No. 30~~ **7 DE Admin. Code 1130**.

In several AQM regulations, Delaware's solid waste regulation is cited. According to the 2006 Manual, and the latest version of that regulation, the citation is changed to:

...~~the Solid Waste Regulations~~ **7 DE Admin. Code 1301, Regulations Governing Solid Waste**.

Another common citation in the AQM regulations is the Delaware Code. According to the 2006 Manual, the following standard format is adopted in all AQM regulations under this SIP revision, using Title 29 of Delaware Code, Chapter 80 as an example:

...as defined in 29 Del.C., Ch 80 ...

In cases where an un-bolded "Del.C." is changed to a bold "**Del.C.**", the strikeouts and underlines (i.e., ~~Del.C.~~ **Del.C.**) are not used in the revised regulations, since such change does not alter any meaning of the subject in any aspect. In addition, the symbol "\$" is used when a section of the Delaware Code is cited.

2.6 Other Changes

Based on the specifications in the 2006 Manual, the following changes are also made in all AQM regulations under this SIP revision, with strikeouts representing deletions and underlines for additions:

- 2.6.1 Changing "and/or" to "or".
Example: ...previous permit ~~and/or~~ application...
- 2.6.2 Changing "word(s)" to "word or words".
Example: ... control device~~(s)~~ or devices...
- 2.6.3 Spelling out numbers from 1 to 9, except those followed by specifying symbols such as %, °C, °F, and those used for special terms such as "the 1-hour ozone standard." However, numerals between 1.0 and 9.0 are not spelled out, due to the precision meaning held by the decimal place.
- 2.6.4 Using Arabic numbers for 10 and greater, except when used at the beginning of a sentence.
- 2.6.5 Changing word "percent" following a numeral to "%".
Examples for the above three changes include:
... ~~3~~ three years after the effective date ...
... 5 ~~percent~~ % of the emissions ...
... ~~twenty percent~~ 20% of the emissions ...
- 2.6.6 Change "deg C and deg F" to "°C and °F", respectively.
Example: ...at 343 ~~deg. C~~ °C (650 ~~deg. F~~ °F) or higher ...
- 2.6.7 Change dates in the text, for example, from "12/02/94" to "December 2, 1994."
This change is made according to the 2006 Manual. For those dates in front of a section title line, see 3.4 of this SIP revision.

3.0 Non-Substantive Changes

3.1 Addition and Deletion of Words

3.1.1 Additions

In a current AQM regulation, its sections and subsections may be referenced frequently in the regulation itself. In addition, the federal Clean Air Act (the Act) may be cited frequently as well. To ensure precise citations and references, the terms "of (or in) this regulation" and "of (or in) the Act" are added wherever they seem necessary and adequate. See examples in 3.1.2 of this SIP revision.

3.1.2 Deletions

In the current regulations, terms such “section, subsection, part, subpart, paragraph, and subparagraph” are used extensively, but not consistently and properly. For example, the term “section” is used to denote not only sections, but oftentimes subsections and even sub-subsections. In addition, the term “paragraph” is used for sections and subsections which contain multiple paragraphs. Under this SIP revision, terms “section, subsection, part, subpart, paragraph, and subparagraph” are no longer used in front of section or subsection numbers. Examples include:

...pursuant to ~~section 5(a)(i)(1)A~~ 5.1.1.1.1 of this regulation...
 (See also 2.4 of this SIP revision.)

... to meet the requirements of Section 112(i)(1) of the Act...
 (See also 1.3 of this SIP revision.)

3.1.3 Deleting Specific Section and Subsection Numbers

There are cases in the current regulations where there is only one subsection in a section. This single subsection is no longer numbered under this SIP revision. See example below, where “6.1” is deleted since it was to denote a single subsection in Section 6.

~~Section 6—~~

6.0 RACT PROPOSALS

~~6.4~~ The RACT proposal submitted in accordance with...

3.2 Changing *Italic* Font Style to Regular Style

In some current regulations, the *italic* font is used for the purpose of identifying terms that are defined in the subject regulations. In other regulations, the italic font is used for other purposes, such as emphasis. Under this SIP revision, the *italic* font is no longer used. This change is not indicated by strikeouts and underlines (e.g., ~~emissions~~ emissions) in the revised regulations, since such change does not alter any meaning of the terms themselves and their contexts in any aspect.

3.3 Renumbering Tables and Equations

Tables or equations in the current AQM regulations are numbered in various ways. Under this SIP revision, a standard format of “X-Y” is adopted for all tables and equations, with X denoting a section and Y denoting table or equation order in that section. For example, the following changes are made in Section 7 of Regulation 17 and Section 1 of Regulation 41, for table number and equation number, respectively:

TABLE ~~7-2—4~~ 7-1. ESTIMATED EMISSIONS METHOD CODE

1.6.1.1 ... Determine the VOC content using equation 1-1 as follows:

$$\text{VOC Content} = \frac{Ws - Ww - Wec}{Vm - Vw - Vec} \quad (1-1)$$

When tables or equations appear in an appendix, they are also numbered with the standard format of “X-Y”, where X denoting the appendix (A, B, ...etc. See 3.5 of this SIP revision) and Y denoting table or equation order in the appendix. For example, the 3rd equation in Appendix A is numbered as “A-3”.

3.4 Dates Associated with Section Titles

Historically, all Delaware AQM regulations have placed a date, in the format of “mm/dd/yy” or “mm/dd/yyyy,” immediately in front of or after a section title, indicating the date when the subject section was adopted in its latest version. Those dates are mainly for record purpose. It is oftentimes necessary to revise or update only individual section or sections, but not the whole regulation. Therefore, new

requirements and supporting data are reflected only in the newly-adopted section or sections. It is determined, under this SIP revision, that those dates are maintained in all AQM regulations, in a consistent format of “mm/dd/yyyy.”

3.5 Appendixes

3.5.1 Numbering Appendixes

Appendixes in a regulation are numbered using capital letters (A, B, ...) under this SIP revision. In Regulation 24, the current appendixes are numbered with capital letters in double quotation marks (e.g., Appendix “A”). All appendixes in Regulation 24 are renumbered with un-quoted capital letters under this SIP revision, without strikeouts and underlines (e.g., “A” A).

In addition, all appendixes of AQM regulations are identified using bold-face (i.e., Appendix) under this SIP revision, to distinguish them from appendixes of other documents cited in the AQM regulations.

3.5.2 Footnotes in Appendixes

According to the 2006 Manual, footnotes should be presented at the end of a regulation. For appendixes, however, footnotes are placed at the end of each appendix under this SIP revision. For example, footnotes used in an appendix of Regulation 24 are presented at the end of the subject appendix, instead of at the far end of the entire regulation.

3.5.3 References in Appendixes

References in an appendix are no longer denoted by superscripts (i.e., ^{1, 2, ...}) under this SIP revision. Instead, a directing text in parenthesis (“see # of this appendix”) is used, where “#” is the order number of the reference listed at the end of the appendix.

3.6 Other Changes

Other non-substantive changes are made under this SIP revision, mainly for consistency and clarification purposes. The changes are indicated by strikeouts and underlines, and are self-explanatory. The following is an example:

~~12.8 through 12.10~~ [Reserved]

12.8 [Reserved]

12.9 [Reserved]

12.10 [Reserved]

4.0 Correction of Errors

Correction of errors under this SIP revision is self-explanatory. For example, the following correction is made in 2.3 of Regulation 9:

...shall not apply... to petroleum storage and transfer facilities.

Examples of other self-explanatory corrections under this SIP revision include:

Correcting “CO2” to “CO₂”;

Correcting “cm3” to “cm³”;

Correcting “the 31st” to “the 31st”.

The above superscript or subscript corrections are not indicated with strikeouts and underlines in this SIP revision, since such corrections do not alter any meaning of the subjects in any aspect.

5.0 Appendices

- A. *Delaware Manual for Drafting Regulations*, March 2006 Edition, Registrar’s Office, Division of Research of the General Assembly, Dover, DE. Available at <http://regulations.delaware.gov/documents/drafting&stylemanual.pdf>
- B. Collection of Revised Delaware SIP Regulations. Available at

<http://regulations.delaware.gov/register/july2008/proposed/index.shtml#TopOfPage>
<http://regulations.delaware.gov/register/september2008/final/index.shtml#TopOfPage>

Under: DEPARTMENT OF NATURAL RESOURCES AND ENVIRONMENTAL CONTROL

DEPARTMENT OF STATE

DIVISION OF PROFESSIONAL REGULATION

400 Delaware Gaming Control Board

Statutory Authority: 28 Delaware Code, Sections 1122 (a) and 1503

(28 Del.C. §§1122 (a) and 1503)

24 DE Admin. Code 401, 402, 403, 404

ORDER

After due notice in the *Register of Regulations* and two Delaware newspapers, a public hearing was held on June 5, 2008 at a scheduled meeting of the Gaming Control Board to receive comments regarding proposed amendments to the Board's Rules.

The proposed amendments are designed to require the submission of applications in a time frame so that the Board will have two meetings to consider the applications. The amendments would also redefine the term "week" to mean a period beginning on Sunday and ending on Saturday. The amendments would also add the term "permit" to make it clear that the Board issues both licenses and permits. Other proposed amendments were not approved by the Board.

The proposed amendments to the regulations were published in the *Register of Regulations*, Vol. 11, Issue 11, on May 1, 2008.

Summary of the Evidence and Information Submitted

No written comments were received. Members of the public appeared at the hearing and offered comments.

Findings of Fact and Conclusions

The public was given notice and an opportunity to provide the Board with comments in writing and by testimony at the public hearing on the proposed amendments. Members of the public appeared and made comments to the Board.

The Board finds that the proposed amendments to the rules and regulations are necessary and in the public interest.

Pursuant to 28 Del.C. §1122, the Board has statutory authority to promulgate regulations governing the licensing to conduct games. The proposed amendments clarify provisions of Title 28 regarding applications.

Decision and Effective Date

The Board hereby adopts the proposed changes to its rules in the manner to be published in the *Register* in September, 2008, to be effective 10 days following publication of this order in the *Register of Regulations*.

Text and Citation

The text of the revised rules shall be as published in the *Register of Regulations* in September, 2008 as attached hereto as Exhibit A.

SO ORDERED this 13th day of August, 2008.

DELAWARE GAMING CONTROL BOARD

James B. Greene, Chair

Deborah S. Messina, Member

Thomas R. Trader, Member

Brad A. Barrie, Member

***Please note that no changes were made to the regulation as originally proposed and published in the July 2008 issue of the *Register* at page 1432 (11 DE Reg. 1432). Therefore, the final regulation is not being republished. A copy of the final regulation is available at:**

400 Delaware Gaming Control Board

DEPARTMENT OF TRANSPORTATION**DIVISION OF TRANSPORTATION SOLUTIONS**

Statutory Authority: 17 Delaware Code Sections 134, 141 and 21 Delaware Code Chapter 41
(17 **Del.C.** §§134,141 and 21 **Del.C.** Ch. 41)

Revisions to the Delaware Manual on Uniform Traffic Control Devices, Parts 2, 3 and 6

Proposed changes to the Delaware version of the Federal Manual on Uniform Traffic Control Devices (MUTCD), Parts 2, 3, and 6 were previously advertised in the State Register of Regulations. Comments on the proposed changes were received, and the Final Orders were issued adopted the updated Manual.

Summary of the Evidence and Information Submitted

The Department has since determined that certain non-substantive revisions should be made to each Part, as outlined herein:

- Part 2 – Table of Contents –Section 2C.40 – Changed W-11-8-DE to W11-8-DE
- Part 3 – Figure 3B-15 – Reversed the orientation of the Yield Here to Pedestrians sign in the bottom figure, to reflect the proper sign message
- Part 6 – Case 20-B – Removed underline below the comma following “TWO-WAY”

The Department considers none of these changes to be substantive in nature, thus causing the need for a new comment period.

Findings of Fact

Based on the record in this docket, I make the following findings of fact:

1. The proposed changes in the Manual on Uniform Traffic Control Devices, Parts 2, 3, and 6, are useful and proper, as amended pursuant to the process required under the Administrative Procedures Act.
2. The adoption of these proposed changes to the MUTCD is in the best interests of the State of Delaware.

Decision and Effective Date

Based on the provisions of Delaware law and the record in this docket, I hereby adopt the amended Delaware MUTCD, Parts 2, 3, and 6, as more fully appear in the CD version attached hereto, to be effective on September 11, 2008.

IT IS SO ORDERED this 19th day of August, 2008.

Carolann Wicks, Secretary

Delaware Department of Transportation

Comment	Page Number(s) & Figure Number(s)	DeIDOT Response
Sand ballasts shall contain 5% by volume sodium chloride mixed with dry clean sand	Pages 6F-32, 6F-33, 6F-37 and 6F-48	Revised per comment
Delete sign R4-2 from Part 6	Page 6F-41 and Figure 6F-3	Revised per comment
Delete sign R8-3a from Part 6	Figure 6F-3	Revised per comment
Delete sign R9-8 from Part 6	Pages 6F-3, 6F-11 and Figure 6F-3	Revised per comment
Add sign M4-9-DE (Detour [Through]) to Part 6	Page 6F-6 and Sign Appendix	Revised per comment
W(DE)20-6-2 and W(DE)20-6-3 have been deleted. W4-2 is being used	Sign Appendix	Revised per comment
R4-8-DE1 should be renamed R4-8-DE	Table 6F-1 and Sign Appendix	Revised per comment
Change from one light fixture to one light plant to be dedicated to the flagger operation	Page 6E-5	Revised per comment
Size of sign R2-6-DE is incorrect in Table 6F-1	Table 6F-1	Revised per comment
Delete sign R(DE)4-8-1 from Part 6	Table 6F-1 and Sign Appendix	Revised per comment
R4-1-DE sign layout should be revised to match current size of 48" x 12" and renamed as R4-1-DE1	Table 6F-1 and Sign Appendix	Revised per comment
Delete sign W(DE)9-3a-1 from Part 6	Table 6F-1	Revised per comment
Revise sign naming format to match that of Part 2 and DE Sign Book	All Delaware-specific signs	Revised per comment

***Please Note:** Due to the size of the proposed regulation, the DeIDOT Manual on Uniform Traffic Control Devices, Parts 2, 3 and 6, is not being published here. A PDF version is available at:

MUTCD236

STATE BOARD OF PENSION TRUSTEES THE DELAWARE PUBLIC EMPLOYEES' RETIREMENT SYSTEM

Statutory Authority: 29 Delaware Code, Section 8308(c)(1) (29 **Del.C.** §8308(c)(1))

ORDER

The State Board of Pension Trustees (the "Board") in accordance with 29 **Del.C.** §8308(c)(1) proposed changes and additions to the Rules and Regulations relating to the administration of the Delaware Public

Employees' Retirement System ("DPERS") for the following retirement plans: (1) State Employees' Pension Plan, (2) State Police Pension Plan, (3) State Judiciary Pension Plan, (4) County Municipal Employees' Pension Plan, and (5) County & Municipal Police/Firefighter Pension Plan. These proposals reflect the current practices at the Office of Pensions and additionally incorporates operational provisions required by the United States Internal Revenue Service to maintain the qualified status of DPERS' retirement plans.

Notice of the public hearing and a copy of the proposed regulatory changes were published in the *Delaware Register of Regulations*, Volume 11, Issue 12, at page 1621 on June 1, 2008. The Comment Period ended on June 30, 2008. Notice of the Public Hearing was published in the *News Journal* and the *Delaware State News*. A Public Hearing was held before the Board at 11:00 a.m. on July 25, 2008, at the Office of Pensions located in the McArdle Building at 860 Silver Lake Boulevard, Suite 1, Dover, Delaware 19904.

Summary of the Evidence and Information Submitted

No written or verbal comments were received prior to the hearing. The Board held a Public Hearing on July 25, 2008, and received no public comments.

Findings of Fact

The Board finds that adoption of the proposed regulations to the (1) State Employees' Pension Plan, (2) State Police Pension Plan, (3) State Judiciary Pension Plan, (4) County Municipal Employees' Pension Plan, and (5) County & Municipal Police/Firefighter Pension Plan is necessary to update the administration of the retirement plans and incorporate provisions required by the United States Internal Revenue Service to maintain the qualified status of DPERS' retirement plans.

Decision and Effective Date

The Board hereby adopts the proposed Rules and Regulations for the (1) State Employees' Pension Plan, (2) State Police Pension Plan, (3) State Judiciary Pension Plan, (4) County Municipal Employees' Pension Plan, and (5) County & Municipal Police/Firefighter Pension Plan to be effective 10 days following final publication of this order in the *Register of Regulations*.

Text and Citation

Due to the size of the final regulations, they are not being published here. A copy of the regulations are available at:

The Delaware Public Employees' Retirement System

IT IS SO ORDERED this 25th day of July 2008, by the Board of Pension Trustees of the State of Delaware.

Nancy M. Shevock, Presiding Chairperson and Trustee

Robert W. Allen, Trustee

Jan M. King, Trustee

Helen R. Foster, Trustee

Richard S. Cordrey, Ex-Officio Board Member

DEPARTMENT OF NATURAL RESOURCES AND ENVIRONMENTAL CONTROL

DIVISION OF AIR AND WASTE MANAGEMENT

Statutory Authority: 7 Delaware Code, Chapter 60, (7 Del.C. Ch. 60)

Delaware Proposed Visibility State Implementation Plan

1. TITLE OF THE REGULATIONS:

Delaware's Proposed Visibility State Implementation Plan

2. BRIEF SYNOPSIS OF THE SUBJECT, SUBSTANCE AND ISSUES:

The federal Clean Air Act mandates protection of visibility in Class I federal areas, such as national parks, forests and wilderness areas. Under the 1999 Regional Haze Rule, states are required to develop a series of State Implementation Plans (SIPs) to reduce visibility impairment with the express intent that; by 2064 the visibility in the Class I areas will be returned to natural conditions. This proposed SIP is the first SIP in this process, and it establishes that *Brigantine National Wildlife Refuge (BNWR)*, NJ is the only Class I area that Delaware significantly impacts. Delaware coordinated with Class I states and the Mid-Atlantic/Northeast Visibility Union (MANE-VU) in the development of this proposed SIP to present strategies to lessen visibility impairment in *BNWR*.

This proposed SIP also shows that visibility impairment is primarily caused by sulfur dioxide, and to a lesser degree, primary particles and other particle precursors. These particles and particle precursors are transported from broad geographic areas, and are emitted from many source types. This proposed SIPs goal's and emission reduction strategies demonstrate that adopted and enforceable State and Federal regulations and control measures meet long term strategies and "reasonable progress goals" by 2018, as established by Class I states and regional consultation process.

3. POSSIBLE TERMS OF THE AGENCY ACTION:

None

4. STATUTORY BASIS OR LEGAL AUTHORITY TO ACT:

7 Del.C. Ch. 60, Environmental Control

5. OTHER REGULATIONS THAT MAY BE AFFECTED BY THE PROPOSAL:

None

6. NOTICE OF PUBLIC COMMENT:

The public comment period for this proposed SIP revision will extend through September 23, 2008. Interested parties may submit comments in writing during this timeframe to Jack Sipple, Air Quality Management Section, 156 S. State St., Dover, DE 19901, and/or statements and testimony may be presented either orally or in writing at the public hearing to be held beginning at 6:00 p.m. on Tuesday, September 23, 2008, in the Priscilla Building, 156 South State Street, Dover, DE.

7. PREPARED BY:

Jack Sipple (302) 739-9402

john.sipple@state.de.us

August 14, 2008

***Please Note: Due to the size of the Delaware's Proposed Visibility State Implementation Plan, it is not being published here. A copy of the Plan is available at:**

Delaware Proposed Visibility State Implementation Plan

An authenticated PDF version of the Appendices for the Delaware Proposed Visibility State Implementation Plan is available here:

Appendices for Delaware Proposed Visibility State Implementation Plan

- Appendix 1-1a** Contributions to Regional Haze in Northeast and Mid-Atlantic United States
- Appendix 1-1b A** Appendix A -- Brigantine Supplement
- Appendix 2-1** Implementation, Maintenance, And Enforcement of National Ambient Air Quality Standards, Delaware SIP
- Appendix 3-1** Mid-Atlantic/Northeast Visibility Union (MANE-VU) Regional Planning Organization -- Final Interim Principles for Regional Planning
- Appendix 4-1** U.S. Fish and Wildlife Service Comments -- Delaware Draft Regional Haze Rule State Implementation Plan
- Appendix 7-1** Technical Support Document for 2002 MANE-VU SIP Modeling Inventories, Version 3
- Appendix 7-2** MANE-VU 2002 Base Year Inventory Tables
- Appendix 7-3** Documentation of 2018 Emissions from Electric Generating Units in the Eastern United States for MANE-VU's Regional Haze Modeling
- Appendix 7-4** Development of Emission Projections for 2009, 2012, and 2018 for NonEGU Point, Area, and Nonroad Source in the MANE-VU Region
- Appendix 7-5** 2009, 2012, and 2018 Projection Year tables (Smoke inputs) for EGU, Non-EGU Point, Area, and Non-road Source in Delaware
- Appendix 7-6** Delaware VOC (includes organic carbon) Control Measures On-The-Books
- Appendix 8-1** Best Available Retrofit Technology (BART) Letters
- Appendix 8-2a** Best Available Retrofit Technology (BART) City of Dover McKee Run Generating Station
- Appendix 8-2b** City of Dover McKee Run Generating Station Best Available Retrofit Technology (BART) Analysis and Proposal Addendum
- Appendix 8-2c** Addendum -- Best Available Retrofit Technology Determination -- Indian River Generating Station Unit 3
- Appendix 8-2d** Source-Specific Best Available Retrofit Technology (BART) Modeling and Engineering Review: Edge Moor Units 4 & 5
- Appendix 8-3** Regulation No. 30 -- Title V -- State Operating Permit Program
- Appendix 8-4** Regulation 1102 Permits (Formerly Reg. No. 2)
- Appendix 8-5** Evraz Claymont Steel Permit
- Appendix 8-6** Technical Support Document for Proposed Regulation No. 1146 Electric Generating Unit (EGU) Multi-Pollutant Regulation
- Appendix 9-1** Baseline and Natural Background Visibility Conditions
- Appendix 9-2** The Nature of the Fine Particle and Regional Haze Air Quality Problems in the MANE-VU Region: A Conceptual Description
- Appendix 9-3** Assessment of Reasonable Progress for Regional Haze in MANE-VU Class I Areas

DELAWARE RIVER BASIN COMMISSION

PUBLIC NOTICE OF PROPOSED RULEMAKING AND PUBLIC HEARING

Proposed Amendments to the *Water Code* and *Comprehensive Plan* to Implement a Revised Water Audit Approach to Identify and Control Water Loss

The Delaware River Basin Commission will hold a public hearing and business meeting on Wednesday, September 24, 2008 beginning at 10:30 a.m. The meeting location could not be confirmed as of the deadline for this notice. For more information, including the meeting location, visit the DRBC web site at www.drbc.net or contact Pamela M. Bush, Esq., Commission Secretary and Assistant General Counsel, at 609-883-9500 extension 203.

DELAWARE STATE FIRE PREVENTION COMMISSION

PUBLIC NOTICE

Delaware State Fire Prevention Regulations, Part VIII, Fire Department and Ambulance Company Administrative Standards, Chapter 1 Financial Audit Regulations

The Delaware State Fire Prevention Commission will hold a public hearing pursuant to 16 **Del.C.** §6622 and 29 **Del.C.** §101 on Tuesday, October 21, 2008 at 1:00 P.M. in the Commission Chamber, Delaware State Fire School, Delaware Fire Service Center, 1463 Chestnut Grove Road, Dover, Delaware. The Commission is proposing new regulations as the result of the enactment of H.B. 329, codified at 16 **Del.C.** §6622. The new regulations will be included as Delaware State Fire Prevention Regulations, Part VIII, Fire Department and Ambulance Company Administrative Standards, Financial Audit Regulations.

Persons may view the proposed changes to the Regulations between the hours of 8:00 a.m. to 4:30 p.m., Monday through Friday, at the Delaware State Fire Prevention Commission, Delaware State Fire School, Delaware Fire Service Center, 1463 Chestnut Grove Road, Dover, Delaware, 19904. You can find the meeting announcement and proposed changes on the Delaware Website <http://www.delaware.gov/egov/calendar.nsf>. There will be a reasonable fee charge for copies of the proposed changes or the proposed changes may be retrieved from the webpage for free.

Persons may present their views in writing by mailing their views to the Commission at the above address prior to the hearing. The final date to submit written or oral comments shall be at the public hearing. If the number of persons desiring to testify at the public hearing is large, the amount of time allotted to each speaker may be limited.

The Commission will consider promulgating the proposed regulations immediately following the public hearing.

DEPARTMENT OF EDUCATION

The State Board of Education will hold its monthly meeting on Thursday, September 18, 2008 at 1:00 p.m. in the Townsend Building, Dover, Delaware.

DEPARTMENT OF HEALTH AND SOCIAL SERVICES**DIVISION OF MEDICAID AND MEDICAL ASSISTANCE****PUBLIC NOTICE****Medical Assistance During Transition to Medicare Program
Attachment 2.2-A, Page 18 and Supplement 6 to Attachment 2.6-A
DSSM 17800**

In compliance with the State's Administrative Procedures Act (APA - Title 29, Chapter 101 of the **Delaware Code**) and under the authority of Title 31 of the **Delaware Code**, Chapter 5, Section 512, Delaware Health and Social Services (DHSS) / Division of Medicaid and Medical Assistance (DMMA) is proposing to amend the Title XIX Medicaid State Plan and the Division of Social Services Manual (DSSM) concerning covered groups of optional categorically needy individuals.

Any person who wishes to make written suggestions, compilations of data, testimony, briefs or other written materials concerning the proposed new regulations must submit same to Sharon L. Summers, Planning & Policy Development Unit, Division of Medicaid and Medical Assistance, 1901 North DuPont Highway, P.O. Box 906, New Castle, Delaware 19720-0906 or by fax to 302-255-4425 by September 30, 2008.

The action concerning the determination of whether to adopt the proposed regulation will be based upon the results of Department and Division staff analysis and the consideration of the comments and written materials filed by other interested persons.

DIVISION OF SOCIAL SERVICES**PUBLIC NOTICE****3006 Delaware Temporary Assistance for Needy Families (TANF) Employment and Training Program
3006.1 Mandatory Participants**

In compliance with the State's Administrative Procedures Act (APA - Title 29, Chapter 101 of the **Delaware Code**) and under the authority of Title 31 of the **Delaware Code**, Chapter 5, Section 512, Delaware Health and Social Services (DHSS) / Division of Social Services (DSS) is proposing to amend the Division of Social Services Manual (DSSM) regarding the TANF Employment & Training Program.

Any person who wishes to make written suggestions, compilations of data, testimony, briefs or other written materials concerning the proposed new regulations must submit same to Sharon L. Summers, Policy & Program Development Unit, Division of Social Services, 1901 North DuPont Highway, P.O. Box 906, New Castle, Delaware 19720-0906 or by fax to (302) 255-4425 by September 30, 2008.

The action concerning the determination of whether to adopt the proposed regulation will be based upon the results of Department and Division staff analysis and the consideration of the comments and written materials filed by other interested persons.

**DEPARTMENT OF NATURAL RESOURCES AND ENVIRONMENTAL
CONTROL****DIVISION OF AIR AND WASTE MANAGEMENT****NOTICE OF PUBLIC HEARING AND COMMENT PERIOD****1147 CO₂ Budget Trading Program**

This new regulation will create Delaware's portion of a multi-state Carbon Dioxide (CO₂) Budget Trading Program. The Budget Trading also known as a cap-and-trade program was developed by the Regional Greenhouse Gas Initiative, or RGGI, which is a cooperative effort amongst a number of Northeastern and Mid-Atlantic States

which include Connecticut, Delaware, Maine, Maryland, Massachusetts, New Hampshire, New Jersey, New York, Rhode Island and Vermont. The purpose of RGGI is to reduce the emissions of CO₂ from the Power Sector's Electric Generating Units (EGUs). CO₂ is a greenhouse gas that contributes to global warming.

Between 2009 and 2015 the emissions of CO₂ from any EGU with a maximum rated heat input capacity of equal to or greater than 25 megawatts that is located in a RGGI state would be capped at current levels. After 2015 the cap would be reduced incrementally to achieve a 10 percent reduction by 2019. Under the cap-and-trade program one allowance will be issued for each ton of CO₂ emissions allowed by the cap. Each subject EGU will be required to have enough allowances to cover its reported emissions each year. The EGUs may buy or sell allowances, but individual EGU emissions shall not exceed the amount of allowances it possesses. The total amount of the allowances will be equal to the emissions cap for the RGGI states. Section 11 of these proposed regulations constitutes the elements of the auction program that must be published in the *Register of Regulations* as required by 7 **Del.C.** section 6045(b).

Public Hearing scheduled September 22, 2008 6:00 pm DNREC Auditorium, Richardson & Robbins Building, 89 Kings Highway, Dover, DE 19901

Contact: Valerie Gray, (302) 739-9402, valerie.gray@state.de.us, August 1, 2008

DEPARTMENT OF STATE
DIVISION OF PROFESSIONAL REGULATION
Controlled Substance Committee
PUBLIC NOTICE

Consistent with a recent statutory amendment which relocated the Office of Controlled Substances to the Division of Professional Regulation, Department of State, the Secretary of State, in accordance with 29 **Del.C.** Chapter 101 and 16 **Del.C.** §4731, proposes establishment of a Controlled Substance Committee and to amend previously issued controlled substance regulations.

A public hearing was held on March 11, 2008. James L. Collins, Director of the Division of Professional Regulation, conducted the hearing as the designee of the Secretary of State. As a result of the public comment and upon the recommendation of the Director, the Secretary has determined to make both substantive and non-substantive revisions to the proposed amendments originally published in the *Delaware Register of Regulations* on February 1, 2008 at 11 **DE Reg.** 1024

A second public hearing is scheduled for October 20, 2008 at 10:00 a.m. in the second floor conference room A of the Cannon Building, 861 Silver Lake Boulevard, Dover. The Secretary will receive and consider input in writing from any person concerning the proposed regulations. Written comments should be submitted to the Secretary care of the Office of Controlled Substances, Division of Professional Regulation, Cannon Building, 861 Silver Lake Blvd. Suite 203, Dover, DE 19904. The final date to submit written comments shall be at the public hearing. Anyone wishing to obtain a copy of the proposed regulations or to make comments at the public hearing should contact Office of Controlled Substances at the above address or by calling (302) 744-4500.

The Secretary will consider promulgating the proposed regulations immediately following the public hearing.

PUBLIC SERVICE COMMISSION

NOTICE OF PROPOSED RULE-MAKING AMENDING "RULES AND PROCEDURES TO IMPLEMENT THE RENEWABLE ENERGY PORTFOLIO STANDARD"

Under the "Renewable Energy Portfolio Standards Act," 26 **Del.C.** §§351-363 (2006 Supp.) ("the Act"), each electric supplier making retail electric sales in Delaware must, beginning in 2007, accumulate a portfolio of "renewable energy credits" equivalent to a specified percentage of its overall retail electric supply sales. In 2006,

the Public Service Commission ("PSC") adopted its "Rules and Procedures to Implement the Renewable Energy Portfolio Standard" ("RPS Rules"), which were revised in April of 2008 to reflect legislative changes to the Act enacted in 2007. See 11 DE Reg. 1670-1678 (June 1, 2008).

On June 25, 2008, the General Assembly and Governor enacted two additional provisions to the Act. See 76 Del. Laws ch. 248 §§ 1-2 (June 25, 2008) ("Chapter 248"). In light of those statutory amendments, the PSC now proposes revisions to its RPS Rules to have those rules reflect, and be consistent with, the recent statutory changes. See PSC Order No. 7422 (Aug. 5, 2008). Accordingly, the revisions (1) incorporate the new 350% credit multiplier for energy derived from off-shore wind energy installations sited off the Delaware Coast on or before May 31, 2017, and (2) call for the costs arising out of contracts entered into by a Commission-regulated electric company pursuant to 26 **Del.C.** §1007(d) to be distributed among the entire Delaware customer base of such companies through an adjustable non-bypassable charge. The PSC is authorized to make rules to implement the Act under 26 **Del.C.** §362.

You can review PSC Order No. 7422 (Aug. 5, 2008) and the proposed revised RPS Rules in the September 1, 2008 issue of the *Delaware Register of Regulations*. You can also review the Order and the proposed, revised RPS Rules, at the PSC's Internet website located at <http://depsec.delaware.gov>. If you wish to have written copies of the Order and proposed revised Rules, you can obtain them at the PSC's office at the address located below for \$0.25 per page.

The PSC now solicits comments, suggestions, compilations of data, briefs, or other written materials about the proposed revisions to its RPS Rules. If you wish to file any such materials, you should submit an original and ten copies of such written documents on or before September 30, 2008. You should file such materials with the PSC at the following address:

Public Service Commission
861 Silver Lake Boulevard
Cannon Building
Suite 100
Dover, Delaware, 19904
Attn: Reg. Dckt. No. 56

If possible, you should accompany such written comments with an electronic version of the submission. Such electronic copy may be filed on a copy-capable CD-Rom disk or sent as an attachment to an Internet e-mail addressed to karen.nickerson@state.de.us.

The PSC will also conduct a public evidentiary hearing on the new proposed regulations on Thursday, November 13, 2008 at 10:00 AM at the Commission's office at the address set forth above. You may also submit comments and materials at such public evidentiary hearing.

If you are disabled and need assistance or help to participate in the proceedings, please contact the PSC to discuss that assistance. If you want more information or have questions, you can contact the PSC about this matter at (800) 282-8574 (toll-free in Delaware) or (302) 736-7500. Inquiries can also be sent by Internet e-mail addressed to pamela.knotts@state.de.us.